

APPENDIX TAB I (Part 2)

Hearing Transcript

AMERICAN ARBITRATION ASSOCIATION

DALLAS, TEXAS

TRICON ENERGY, LTD.,)	
)	
Claimant,)	
)	CASE NO.
- against -)	70 198Y 00168 09
)	
VINMAR INTERNATIONAL, LTD.,)	
)	
Respondent.)	

TRANSCRIPT OF PROCEEDINGS

BE IT KNOWN THAT the above-entitled matter came on for arbitration at 8:47 a.m. on the 21st day of September, 2010, at the Houston Club, 811 Rusk, 10th Floor, Travis Room, Houston, Texas, before the Honorable Levi Benton, Presiding, the Honorable Sharolyn Wood and the Honorable Mark Davidson, Arbitrators, and the following proceedings were had:

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<p style="text-align: right;">312</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 THE PANEL OF ARBITRATORS:</p> <p>4 Honorable Levi Benton, Chair</p> <p>5 Honorable Sharolyn Wood</p> <p>6 Honorable Mark Davidson</p> <p>7</p> <p>8 FOR THE CLAIMANT, TRICON ENERGY, LTD.:</p> <p>9 Mr. George R. Diaz-Arrastia</p> <p>10 Ms. Tracy D. Larson</p> <p>11 SCHIRRMESTER, DIAZ-ARRASTIA & BREM, LLP</p> <p>12 700 Milam, 10th Floor</p> <p>13 Houston, Texas 77002</p> <p>14 Tel: (713) 221-2500</p> <p>15 FAX: (713) 228-3510</p> <p>16 gdarrastia@sdblwl.com</p> <p>17 tlaron@sdblwl.com</p> <p>18</p> <p>19 FOR THE RESPONDENT, VINMAR INTERNATIONAL, LTD.:</p> <p>20 Mr. Stephen H. Lee</p> <p>21 Mr. R. Blake Runions</p> <p>22 PORTER & HEDGES, LLP</p> <p>23 1000 Main Street, 36th Floor</p> <p>24 Houston, Texas 77002-6336</p> <p>25 Tel: (713) 226-6000</p> <p>FAX: (713) 226-6286</p> <p>slee@porterhedges.com</p> <p>brunions@porterhedges.com</p> <p>ALSO PRESENT:</p> <p>Mr. Mark S. Antonvich</p> <p>Ms. Angie Gossen</p> <p>Mr. Brad Lockwood</p> <p>Ms. Petrice Podlesny</p>	<p style="text-align: right;">314</p> <p>1 (8:47 a.m.)</p> <p>2 JUDGE BENTON: We're on the record now.</p> <p>3 When we left, I believe we were ready to begin the</p> <p>4 cross-examination by Mr. Lee.</p> <p>5 If you're ready, you may proceed, sir.</p> <p>6 MR. LEE: Thank you.</p> <p>7 VUK RAJEVAC,</p> <p>8 having been previously duly sworn, testified as follows:</p> <p>9 CROSS-EXAMINATION (8:47 a.m.)</p> <p>10 BY MR. LEE:</p> <p>11 Q. Mr. Rajevac, how are you this morning?</p> <p>12 A. Good. Yourself?</p> <p>13 Q. I'm doing fine. Thank you. Yesterday when</p> <p>14 you testified about your role as an operations</p> <p>15 specialist, you were describing that role that you</p> <p>16 perform at Tricon. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And your only experience is working at Tricon?</p> <p>19 A. This is correct.</p> <p>20 Q. Okay. So what you've told us yesterday is how</p> <p>21 you handled your job at Tricon?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. You were not involved in the</p>
<p style="text-align: right;">313</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances..... 312</p> <p>4 PRESENTATION ON BEHALF OF THE CLAIMANT (Continued)</p> <p>5 VUK RAJEVAC</p> <p>6 Cross-Examination by Mr. Lee..... 314</p> <p>7 Redirect Examination by Mr. Diaz-Arrastia... 336</p> <p>8 Recross-Examination by Mr. Lee..... 340</p> <p>9 LAURENTIU PAUL P ASCU (VIA VIDEOTAPE PLAYBACK)... 345</p> <p>10 RICHARD W. WILSON, Ph.D. (VIA VIDEOTAPE PLAYBACK) 384</p> <p>11 STEVE SIMPSON</p> <p>12 Direct Examination by Mr. Diaz-Arrastia..... 462</p> <p>13 Cross-Examination by Mr. Lee..... 492</p> <p>14 Redirect Examination by Mr. Diaz-Arrastia... 508</p> <p>15 Recross-Examination by Mr. Lee..... 512</p> <p>16 GARY COFRAN (VIA DEPOSITION EXCERPTS READBACK)... 529</p> <p>17 PRESENTATION ON BEHALF OF THE RESPONDENT</p> <p>18 LAURENTIU PAUL P ASCU</p> <p>19 Direct Examination by Mr. Lee..... 542</p> <p>20 Cross-Examination by Mr. Diaz-Arrastia..... 554</p> <p>21 Reporter's Certificate Page..... 574</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">315</p> <p>1 negotiations between the traders and the broker for the</p> <p>2 transaction at issue, were you?</p> <p>3 A. No, I was not.</p> <p>4 Q. And you first heard about the alleged deal</p> <p>5 through Mr. Lockwood. Is that correct?</p> <p>6 A. Yes, that would be correct.</p> <p>7 Q. Would you take a look at -- in the joint</p> <p>8 exhibit notebook, Exhibit No. 5. And do you</p> <p>9 recognize -- well, we'll give everybody a chance to get</p> <p>10 to that. We've got so many notebooks.</p> <p>11 Do you recognize the second page through</p> <p>12 the rest of the exhibit as Tricon's sales contract?</p> <p>13 A. I recognize the document, yes.</p> <p>14 Q. Is that Tricon's sales contract?</p> <p>15 A. That's -- we call it Tricon's letter.</p> <p>16 Q. Okay. Well --</p> <p>17 A. It includes the main terms and the proposed</p> <p>18 additional terms on it.</p> <p>19 Q. Okay. Mr. Lockwood referred to it as a</p> <p>20 contract in his e-mail to Mr. Wilson on the first page,</p> <p>21 is that right, the first e-mail at the bottom?</p> <p>22 A. Yes, he did.</p> <p>23 Q. Okay. So I'm just -- that's what this</p> <p>24 document is. Correct?</p> <p>25 A. I -- you can make that decision. One says</p>

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<p style="text-align: right;">316</p> <p>1 e-mail. I call it differently but --</p> <p>2 Q. You testified about terms and conditions</p> <p>3 yesterday?</p> <p>4 A. Yes.</p> <p>5 Q. But does Joint Exhibit 5 contain Tricon's</p> <p>6 terms and conditions?</p> <p>7 A. Yes, it does.</p> <p>8 Q. And so yesterday when you said that -- you</p> <p>9 testified that the terms and conditions are very</p> <p>10 important to Tricon and to a deal, you were referring to</p> <p>11 the terms and conditions contained within Joint</p> <p>12 Exhibit 5. Correct?</p> <p>13 A. Yes, correct.</p> <p>14 Q. And, in fact, I think you said that the terms</p> <p>15 and conditions -- Tricon's terms and conditions have</p> <p>16 significant economic impact to a deal. Correct?</p> <p>17 A. I wasn't referring specifically to Tricon's</p> <p>18 conditions. Just general terms and conditions of any</p> <p>19 deal have a significant economic impact on that specific</p> <p>20 transaction, yeah.</p> <p>21 Q. And certainly the additional terms and</p> <p>22 conditions that are included in Joint Exhibit 5 would</p> <p>23 have some economic benefit to Tricon potentially.</p> <p>24 Correct?</p> <p>25 A. Potentially, yes, correct.</p>	<p style="text-align: right;">318</p> <p>1 with the letter.</p> <p>2 Q. Okay. Has Tricon to your knowledge ever</p> <p>3 performed a transaction solely on the basis of a</p> <p>4 confirmation like we see in Exhibit 4?</p> <p>5 A. Can you repeat that? Has Tricon ever --</p> <p>6 Q. To your knowledge, has Tricon ever performed a</p> <p>7 transaction solely on the basis of a confirmation like</p> <p>8 we see in Joint Exhibit No. 4?</p> <p>9 A. I mean, I don't know how to answer that</p> <p>10 question yes because it's -- that's what -- that's where</p> <p>11 the deal is agreed to. So everything that's agreed to,</p> <p>12 that's where it started so it is based on that.</p> <p>13 Now, if your question is has the -- has a</p> <p>14 transaction ever happened without other documents being</p> <p>15 passed, I wouldn't be able to recall that, but this is</p> <p>16 the essence of the transaction, so, yes, it's based on</p> <p>17 that.</p> <p>18 Q. And --</p> <p>19 A. That's where the deal was agreed to.</p> <p>20 Q. Okay. In every transaction that you have</p> <p>21 brokered through a broker where Tricon was selling a</p> <p>22 product to somebody else --</p> <p>23 A. Okay.</p> <p>24 Q. -- isn't it the case that you always have</p> <p>25 Tricon's sales contract in place?</p>
<p style="text-align: right;">317</p> <p>1 Q. You consider them to be valuable terms and</p> <p>2 conditions?</p> <p>3 A. I do.</p> <p>4 Q. You're a trader now?</p> <p>5 A. I am.</p> <p>6 Q. Have you ever done a deal through Ed Leyman?</p> <p>7 A. I have.</p> <p>8 Q. Would you take a look at Joint Exhibit 4? And</p> <p>9 if you'll take a look at the second page of that</p> <p>10 exhibit.</p> <p>11 A. Yes.</p> <p>12 Q. Do you recognize this as a confirmation that</p> <p>13 Mr. Leyman might send out?</p> <p>14 A. I do.</p> <p>15 Q. You do?</p> <p>16 A. Yes.</p> <p>17 Q. You've seen these before?</p> <p>18 A. Yes, I have.</p> <p>19 Q. Have you ever done a deal while you've been at</p> <p>20 Tricon solely on the broker confirmation?</p> <p>21 A. I'm not sure how you mean. The broker</p> <p>22 confirmation comes in first when you're dealing with a</p> <p>23 broker.</p> <p>24 Q. Correct.</p> <p>25 A. And then it's expanded upon with the other,</p>	<p style="text-align: right;">319</p> <p>1 A. I -- personally with my trades, yes, I do.</p> <p>2 Q. All right. And the sales contract would be?</p> <p>3 A. Similar to this.</p> <p>4 Q. Similar to Joint Exhibit 5?</p> <p>5 A. Correct.</p> <p>6 Q. All right. I believe your testimony is that</p> <p>7 you've never seen one of Tricon's sales contracts</p> <p>8 signed?</p> <p>9 A. On the spot deals, yes, that's correct.</p> <p>10 Q. And you'll agree with me that Joint Exhibit</p> <p>11 No. 5, the last page, contains places for both</p> <p>12 Mr. Lockwood and Mr. Wilson to sign. Correct?</p> <p>13 A. Correct, correct.</p> <p>14 Q. But it's your testimony that those signature</p> <p>15 blanks are meaningless?</p> <p>16 A. I never said they're meaningless. I'm just</p> <p>17 saying that I don't see them signed in spot deals.</p> <p>18 Q. And you've never seen them signed?</p> <p>19 A. On spot deals, I don't recall ever seeing them</p> <p>20 signed.</p> <p>21 Q. And do you know why signature blanks are in</p> <p>22 there?</p> <p>23 A. I can only speculate it's an industry</p> <p>24 standard -- not standard but industry I guess a custom.</p> <p>25 I can speculate that because whoever sends it I guess</p>

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<p style="text-align: right;">320</p> <p>1 doesn't sign it first, waits for the other people's</p> <p>2 comments and probably the signatures get lost somewhere</p> <p>3 in that process, but that hasn't stopped the deal from</p> <p>4 happening in the past.</p> <p>5 Q. The answer is you don't know why --</p> <p>6 A. No, I don't know exactly why, no.</p> <p>7 Q. Okay. And did I -- did you testify yesterday</p> <p>8 that the Tricon sales contract was not intended to</p> <p>9 cancel the confirmation letter that had been sent by the</p> <p>10 broker?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Would you take a look at Page 3 of Joint</p> <p>13 Exhibit 5? This is Page 3 of the sales contract.</p> <p>14 A. Okay.</p> <p>15 Q. And at the bottom -- and, again, this is the</p> <p>16 sales contract that Tricon sent to Vinmar. Correct?</p> <p>17 A. Correct.</p> <p>18 Q. At the very bottom, there's a statement in the</p> <p>19 sales contract. It says, "Broker." Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. It says, "This cancels and supercedes</p> <p>22 any broker correspondence in relation to this</p> <p>23 transaction and shall be for the sole purpose of</p> <p>24 documenting commission, if any." Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">322</p> <p>1 Q. Okay. Now, some of these terms in the sales</p> <p>2 contract that Tricon sent, I just want to ask a couple</p> <p>3 of things about the -- these provisions. If you take a</p> <p>4 look at Page 2 of the sales contract, Paragraph No. 8</p> <p>5 under taxes.</p> <p>6 A. Uh-huh, yes.</p> <p>7 Q. Do you see that, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Now, what this provision says is that if there</p> <p>10 are any taxes that are imposed as a part of this</p> <p>11 transaction that the buyer will pay for those taxes. Is</p> <p>12 that correct?</p> <p>13 A. Let me read through it real quick. Yes.</p> <p>14 Q. Okay. And it says that if the -- if the taxes</p> <p>15 are for the seller -- so that would be Tricon. So if</p> <p>16 Tricon is required to pay any taxes on this transaction,</p> <p>17 then Tricon has the right to pass those taxes on to</p> <p>18 Vinmar in this situation. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. All right. That type of provision is not</p> <p>21 included in the confirmation from the broker. Correct?</p> <p>22 A. I would assume that's correct.</p> <p>23 Q. And it's certainly possible under this</p> <p>24 situation or any other situation that there might be</p> <p>25 taxes that would increase the amount that Vinmar was</p>
<p style="text-align: right;">321</p> <p>1 Q. Okay. So the -- so the sales contract says it</p> <p>2 cancels and supercedes any broker correspondence?</p> <p>3 A. Yes, it does. It says that.</p> <p>4 Q. Okay. It's your testimony that that</p> <p>5 profession has no meaning?</p> <p>6 A. My testimony is that I understand that</p> <p>7 provision as that this is a document that is re --</p> <p>8 replaces -- it doesn't cancel the deal. It replaces the</p> <p>9 documentation or the correspondence that a broker in</p> <p>10 this case, MOAB, would send and obviously it expands</p> <p>11 upon with some terms that the brokers don't deal with.</p> <p>12 Brokers deal with the main terms of the</p> <p>13 deal. So I understand this here is a document that</p> <p>14 expands upon and replaces the document that MOAB sent</p> <p>15 so...</p> <p>16 Q. Okay. But it says --</p> <p>17 A. It doesn't say that it cancels the deal. I</p> <p>18 don't see that if that's what you mean.</p> <p>19 Q. Well, that's not. My question was, doesn't it</p> <p>20 say that it cancels and supercedes the broker</p> <p>21 confirmation?</p> <p>22 A. Broker correspondence.</p> <p>23 Q. Which would include the confirmation.</p> <p>24 Correct?</p> <p>25 A. The document, yes.</p>	<p style="text-align: right;">323</p> <p>1 required to pay under this deal?</p> <p>2 A. Yes.</p> <p>3 Q. The force majeure provision at Paragraph 6, is</p> <p>4 that something that Tricon considers to be important?</p> <p>5 A. Yes.</p> <p>6 Q. What about Page 3 of the sales contract under</p> <p>7 product use? Now, what this provision in the sales</p> <p>8 contract says is that Vinmar in this case that we're</p> <p>9 talking about, something that was sent to Vinmar, so if</p> <p>10 we assume Vinmar's the buyer.</p> <p>11 It says, "Vinmar represents and warrants</p> <p>12 that the product purchased hereunder shall be used for</p> <p>13 other than gasoline blending purposes in the United</p> <p>14 States."</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Now, that was not included in the broker</p> <p>19 confirmation. Correct?</p> <p>20 A. No.</p> <p>21 Q. And, in fact, as you understand the</p> <p>22 transaction, Vinmar had used -- if it purchased the</p> <p>23 mixed xylenes, it could use that product for whatever</p> <p>24 reason it wanted to. Correct?</p> <p>25 A. As far as I understood, yes.</p>

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<p style="text-align: right;">324</p> <p>1 MR. LEE: Do you need to take a --</p> <p>2 JUDGE BENTON: No. I'm fine.</p> <p>3 Q. (BY MR. LEE) And, in fact, if that's going to</p> <p>4 happen, Vinmar under this contract is required to notify</p> <p>5 Tricon as soon as possible. Correct?</p> <p>6 A. This is correct.</p> <p>7 Q. And is that because -- I mean, that has some</p> <p>8 benefit to Tricon. Correct? They want to make sure</p> <p>9 that the product is not being used for other than</p> <p>10 gasoline blending purposes in the United States?</p> <p>11 A. Tricon has no -- I believe -- I'm not sure.</p> <p>12 You would know that better as a lawyer. I believe there</p> <p>13 was some kind of a provision about not using</p> <p>14 petrochemicals or aromatics and gasoline for gasoline</p> <p>15 blending purposes. This has nothing to do with Tricon.</p> <p>16 Tricon doesn't really care what Vinmar</p> <p>17 uses the product for. I think this is a problem with</p> <p>18 either state or federal law or some kind of a provision.</p> <p>19 Q. Okay. But it's included in the form of a</p> <p>20 sales contract?</p> <p>21 A. It's a form of protection --</p> <p>22 Q. Right.</p> <p>23 A. -- for Tricon, that's correct.</p> <p>24 Q. Yesterday you were asked to look at Joint</p> <p>25 Exhibit No. 4 and Joint Exhibit No. 5 so that's the</p>	<p style="text-align: right;">326</p> <p>1 A. As far as I can see yesterday, they were, but</p> <p>2 did you want to tell me --</p> <p>3 Q. Well, I mean, let's just, for instance, look</p> <p>4 at the quantity. In the Joint Exhibit 4, the quantity</p> <p>5 says that it's "5,000 metric tons plus or minus</p> <p>6 5 percent, seller's option." Right?</p> <p>7 A. Correct.</p> <p>8 Q. That's the language in the --</p> <p>9 A. In the MOAB confirmation.</p> <p>10 Q. -- MOAB confirmation.</p> <p>11 Now, if you look at the Tricon's sales</p> <p>12 contract under quantity, it says, "5,000 metric tons</p> <p>13 plus or minus 5 percent, vessel's option"?</p> <p>14 A. This is correct.</p> <p>15 Q. It's not the same language, is it?</p> <p>16 A. You're right, it's not the same language.</p> <p>17 Q. Okay. And then if we look at the delivery</p> <p>18 term under the confirmation, which is Joint Exhibit 4,</p> <p>19 so flip back to MOAB's letter. It says -- well, it's</p> <p>20 got three paragraphs there. Correct?</p> <p>21 A. Tell me which one you're looking at.</p> <p>22 Q. Under delivery.</p> <p>23 A. Okay. Yes, I do.</p> <p>24 Q. "CFR basis one safe berth/port major ports</p> <p>25 Taiwan or Ulsan Korea."</p>
<p style="text-align: right;">325</p> <p>1 confirm and the sales contract. And the question that</p> <p>2 you were asked is, are all of the essential terms</p> <p>3 identical?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember that question?</p> <p>6 A. Yes.</p> <p>7 Q. What were the essential terms that you were</p> <p>8 referring to between the two documents?</p> <p>9 A. I was talking about the purchasing party,</p> <p>10 Vinmar in this case, the product, the quantity, the</p> <p>11 quality, the price. In this case, there was a promised</p> <p>12 delivery window, which was the first half of September</p> <p>13 in either Ulsan or Taiwan, and that's about it.</p> <p>14 Q. Okay. So just to make sure, you said</p> <p>15 purchasing party, product, quality, quantity, price and</p> <p>16 delivery window?</p> <p>17 A. Correct.</p> <p>18 Q. And you've identified those as the essential</p> <p>19 terms?</p> <p>20 A. Yes. I would say those are the essential</p> <p>21 terms.</p> <p>22 Q. Okay. Now, you'll agree with me that if you</p> <p>23 look at the confirmation and the sales contract and you</p> <p>24 compare those provisions they're not identical, are</p> <p>25 they?</p>	<p style="text-align: right;">327</p> <p>1 A. Uh-huh.</p> <p>2 Q. Okay. Now, the terms in the Tricon sales</p> <p>3 contract, they're not the same completely, are they?</p> <p>4 A. That's just the verbiage that we have. In the</p> <p>5 Ulsan Taiwan, we have all these set ports in our system</p> <p>6 that we can pick from. You can't just type in. And</p> <p>7 Ulsan Taiwan versus Taiwan or Ulsan Korea, I don't see a</p> <p>8 big difference there.</p> <p>9 Q. Well --</p> <p>10 A. Actually, in fact, Ulsan Taiwan versus Taiwan</p> <p>11 Ulsan so --</p> <p>12 Q. Well, I'm just -- is it your testimony that</p> <p>13 the delivery term in the confirmation is identical to</p> <p>14 the delivery terms in the sales contract?</p> <p>15 A. Essentially it is. I mean, the wording,</p> <p>16 obviously there's three lines here and it expands upon</p> <p>17 it a little more versus ours is just one line, but</p> <p>18 essentially they're the same as far as I can see, yes.</p> <p>19 Q. The -- you understand that Mr. Lockwood told</p> <p>20 you that there was a guaranteed first half of September</p> <p>21 delivery into Asia. Correct?</p> <p>22 A. Yes, this is correct.</p> <p>23 Q. And you will not find anything in the Tricon</p> <p>24 sales contract that guarantees delivery first half of</p> <p>25 September?</p>

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<p style="text-align: right;">328</p> <p>1 A. I think -- I think we've already touched upon 2 this. Ship period in our system means when -- in a CFR 3 case, especially for Asia when there is a guaranteed 4 window, that means -- it says here, "September 1 to 5 September 15th." 6 That means what the delivery window is, 7 between September 1st and September 15th SO -- 8 Q. That's Tricon's system. I'm just asking, will 9 I see any -- is there anything in the contract itself 10 that says that it is guaranteed first half September? 11 A. Yes, the ship period. 12 Q. Okay. Do you see anywhere -- the confirmation 13 required Tricon to give Vinmar a minimum of five working 14 days notice of actual discharge date. Do you see that? 15 A. Do you want to point it out to me? 16 Q. Under the delivery term. 17 A. "Minimum of five working days notice of actual 18 discharge date," yes. 19 Q. Okay. And do you see that in Tricon's sales 20 contract? 21 A. No, I did not see that in Tricon's sales 22 contract. 23 Q. Let me ask you now about Joint Exhibit 14. 24 And I think you testified about this document yesterday. 25 And this was your response to Mr. Pascu's e-mail of the</p>	<p style="text-align: right;">330</p> <p>1 remember, didn't Mr. Pascu tell you in his e-mail, which 2 is on this next page, that he would send you Vinmar's 3 purchase order? 4 A. Yeah, I believe he did mention that. 5 Q. So he sent you an e-mail, said, "Here's some 6 comments on the sales contract. I will be sending you a 7 purchase order"? 8 A. Yes, I believe that's what he says. 9 Q. The purchase order was never sent to you. 10 Correct? 11 A. I never received it, no. 12 Q. Before the purchase order was sent, you heard 13 from Rick Wilson that he understood the deal required 14 U.S. origin mixed xylenes. Correct? 15 A. Yeah. I believe a couple of days after my 16 e-mail to Pascu he did say something about believing it 17 would be U.S. origin, yes. 18 Q. All right. And my question was, before you 19 every received a purchase order from Vinmar you heard 20 from Mr. Wilson that his understanding of the deal was 21 it required Tricon to supply U.S. origin? 22 A. Yeah, but it's different. We never received 23 the first order so everything -- any correspondence 24 would be before then so -- 25 Q. Okay. And you had responded to Mr. Wilson's</p>
<p style="text-align: right;">329</p> <p>1 same day. Correct? 2 A. This is correct. 3 Q. Did you -- you know that Laurentiu Pascu was 4 Vinmar's logistics person? 5 A. I did know he was, yes. 6 Q. Okay. And you also knew that Mr. Pascu did 7 not negotiate any of the terms of this alleged agreement 8 through Ed Leyman? 9 A. I didn't know that. I could have assumed -- 10 Q. Okay. 11 A. -- but I didn't know that he didn't. 12 Q. Did you ever talk to Mr. Pascu in the days 13 between July 22nd and July 31, 2008? 14 A. I don't recall ever talking to him on the 15 phone. I believe the only correspondence between him 16 and I were -- were -- they're in the e-mails. 17 Q. Okay. Now, in your first point on your e-mail 18 to Mr. Pascu, you say, "Your comments on the contract 19 well noted and accepted." Right? 20 A. That's correct. 21 Q. And you were referring to some handwritten 22 comments that Mr. Pascu had sent you on this sales 23 contract? 24 A. Yes, I was. 25 Q. Now, we can look at it, but I think you'll</p>	<p style="text-align: right;">331</p> <p>1 e-mail by saying, "No, we didn't guarantee U.S. origin 2 mixed xylenes"? 3 A. Correct. 4 Q. And it's your understanding that Tricon never 5 intended to supply U.S. origin mixed xylenes? 6 A. Absolutely. 7 Q. Okay. Now, you didn't accept all of 8 Mr. Pascu's comments on the sales contract. Correct? 9 A. Correct. 10 Q. In fact, you say, "We don't agree to the 11 demurrage time bar"? 12 A. Yes. 13 Q. And that was never resolved, was it? 14 A. Yes. Never heard back from Mr. Pascu. 15 Q. And you've never seen a signed copy of the 16 sales contract? 17 A. This is correct. 18 Q. Now, on Joint Exhibit 4 under the inspection 19 provision, this confirmation says that "The quantity and 20 quality of the mixed xylenes will be inspected at the 21 load port by an independent inspector mutually agreed 22 upon with costs to be shared equally between buyer and 23 seller"? 24 A. Uh-huh. 25 Q. What that means is that before the mixed</p>

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<p style="text-align: right;">332</p> <p>1 xylenes is loaded onto a ship, Vinmar has the right to</p> <p>2 ensure that the quality and the quantity comply with the</p> <p>3 proposed agreement?</p> <p>4 A. No. It says that they can pay for half of the</p> <p>5 inspector and agree to it together with us.</p> <p>6 Q. Right. But it's supposed to be done before</p> <p>7 it's loaded. Right?</p> <p>8 A. Correct, in an ideal situation, yes.</p> <p>9 Q. Right. And the purpose of that is to ensure</p> <p>10 that the product that is delivered meets the quality</p> <p>11 specification. Correct?</p> <p>12 A. Having an inspector there, yes, that is the --</p> <p>13 that is the purpose.</p> <p>14 Q. Right. I mean, the inspector is the one that</p> <p>15 tests the product to confirm that it meets this</p> <p>16 ASTM 5211 standard?</p> <p>17 A. Right. And issues a certificate of analysis,</p> <p>18 correct.</p> <p>19 Q. Right. And also the inspector would quantify</p> <p>20 or test the quantity, make sure that it met the proposed</p> <p>21 contract?</p> <p>22 A. Yes, this is correct.</p> <p>23 Q. And, again, that's to be done at the load port</p> <p>24 prior to loading onto the ship?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">334</p> <p>1 to keep in mind is that we promised a window of 15 days</p> <p>2 arrival in Asia. And in order to comply with that</p> <p>3 promise in performing our deal, we had to leave</p> <p>4 ourselves -- give ourselves option where -- you also</p> <p>5 have to keep in mind August 8th was the day that -- by</p> <p>6 which Vinmar was supposed to declare their discharge</p> <p>7 port.</p> <p>8 Well, there is a minimum of 35 days of</p> <p>9 sailing time between the U.S. Gulf and Asia. Well, by</p> <p>10 the time you find a vessel, load it and leave after the</p> <p>11 8th declaration, there's a huge chance we wouldn't have</p> <p>12 made it to Korea, Taiwan, whatever the -- whatever</p> <p>13 Vinmar had declared.</p> <p>14 So we had to leave ourselves with the</p> <p>15 option to either give the cargo that would be on the</p> <p>16 water already or give the cargo of a closer origin, i.e.</p> <p>17 Asian origin. That doesn't mean that we wouldn't have</p> <p>18 given Vinmar all the documentation that would have been</p> <p>19 issued by an independent inspector at that load port,</p> <p>20 including quality and quantity.</p> <p>21 That's just the nature of the business.</p> <p>22 When you're asking for a guaranteed window, you have to</p> <p>23 realize that, especially with declaration, it's so close</p> <p>24 to the -- to the potential loading date, say the</p> <p>25 U.S. Gulf, that you can't always be present and be able</p>
<p style="text-align: right;">333</p> <p>1 Q. Now, I'm going to ask you to flip back to</p> <p>2 Joint Exhibit 14. And if we look at the second page of</p> <p>3 that e-mail, it's Mr. Pasco's e-mail to you on</p> <p>4 July 29th, 2008. And he -- in the second paragraph, he</p> <p>5 asks a couple of questions. Correct?</p> <p>6 He says, "Please advise." First he asks</p> <p>7 about the advising bank. But then the second question</p> <p>8 he asks is, "Advise when shipment is expected." Right?</p> <p>9 A. Uh-huh.</p> <p>10 Q. "Be informed that no shipment can take place</p> <p>11 without us being informed for insurance purpose and</p> <p>12 without presence of an independent surveyor" --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- "in this order. Please let us have vessel</p> <p>15 details and port of loading." Right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. And so what he's asking for is we need to know</p> <p>18 where you're going to load it and when it's going to be</p> <p>19 loaded so we can inspect it?</p> <p>20 A. Correct.</p> <p>21 Q. Now, if -- but Tricon didn't necessarily</p> <p>22 intend to allow Vinmar to inspect the quality before it</p> <p>23 was loaded?</p> <p>24 A. Oh, we would have been more than happy to let</p> <p>25 Vinmar inspect the -- before the loading. What you have</p>	<p style="text-align: right;">335</p> <p>1 to have your inspector and all that if you're going to</p> <p>2 require that window so that's what happened here.</p> <p>3 Q. So, I mean, if the deal required Vinmar or</p> <p>4 gave Vinmar the opportunity to inspect it prior to</p> <p>5 loading, you didn't necessarily intend to give them that</p> <p>6 right. Correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And that's what you're referring to</p> <p>9 in -- when you answered this question on the</p> <p>10 page before, Joint Exhibit No. 14, No. 3, where you</p> <p>11 said, "Hey, we may give you a deep sea cargo"?</p> <p>12 A. Correct.</p> <p>13 Q. "We may even give you something of Asian</p> <p>14 origin"?</p> <p>15 A. Correct, in which case if it was Asian origin</p> <p>16 we would have been more than happy to let Vinmar</p> <p>17 participate in the inspection. There would have been</p> <p>18 plenty of time to do so.</p> <p>19 Q. Okay.</p> <p>20 A. It was only deep sea cargo which would --</p> <p>21 which would likely -- in which case we would likely have</p> <p>22 to give them already issued certificates of quality and</p> <p>23 quantity for the -- for the xylene load.</p> <p>24 MR. LEE: Pass the witness.</p> <p>25 JUDGE BENTON: Mr. Diaz-Arrastia?</p>

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<p style="text-align: right;">336</p> <p>1 MR. DIAZ-ARRASTIA: Thank you, Your Honor. 2 REDIRECT EXAMINATION (9:13 a.m.) 3 BY MR. DIAZ-ARRASTIA: 4 Q. I have a few questions. Mr. Pascu, let me 5 just pick up with this inspection issue that you -- I'm 6 sorry. Mr. Rajevac. 7 JUDGE BENTON: Okay. You're ahead of me. 8 MR. DIAZ-ARRASTIA: I'm ahead of you now, 9 Judge. 10 Q. (BY MR. DIAZ-ARRASTIA) Mr. Rajevac, on this 11 inspection issue we just finished talking about -- and I 12 think it's what you just finished saying. Now, if after 13 Mr. Pascu had seen your note that said, "We could give 14 you a deep sea cargo already on the water" or "We could 15 give you Asian origin," if Mr. Pascu had said, "Look, we 16 absolutely, positively have to be there at the 17 inspection," what would you have done? 18 A. I would have said, "You're going to have to 19 declare your discharge port earlier so that we can 20 arrange for that." 21 Q. Or you could have said, "We'll give you Asian 22 origin if you can inspect" -- 23 A. Exactly. Those are the two options. 24 Q. Okay. Now, a moment ago I think Mr. Lee asked 25 you that Tricon never intended to deliver U.S. origin MX</p>	<p style="text-align: right;">338</p> <p>1 Paragraph 8 that had -- has to do with taxes -- 2 A. Uh-huh. 3 Q. -- Paragraph 6 that has to do with force 4 majeure, I think Paragraph 10 that has to do with 5 product use. 6 A. Correct. 7 Q. Now, let me ask you, sir, could -- after 8 looking at Joint Exhibit 6, with regard to any of those 9 paragraphs, could Mr. Pascu have just told you, "Well, I 10 don't agree to that" or "I want to change it"? 11 A. He could have. 12 Q. Okay. And, in fact, that's what he did with 13 transfer of title and risk? He asked for that to be 14 changed? 15 A. Correct. 16 Q. So if he doesn't ask to be changed, that means 17 it's okay with him. Right? 18 A. That's how I understood it, yes. 19 Q. Okay. Now, let's take a look at the language 20 that you talked about when you compared Joint Exhibit 4 21 to Joint Exhibit 5 and Mr. Lee asked you about seller's 22 option versus vessel's option, different words. 23 A. Right. 24 Q. As a practical matter in this deal, did 25 that -- does that have the same effect?</p>
<p style="text-align: right;">337</p> <p>1 and you agreed with that. Now, is that completely 2 right? Is it that you were not going -- 3 A. I didn't understand -- 4 Q. -- that you absolutely -- 5 A. -- it as didn't intend to. I understood it as 6 at this point -- we didn't guarantee. Maybe I misheard. 7 Q. Yeah. 8 A. There was no intention to deliver any specific 9 or no intention to deliver -- there was no -- at that 10 point there was no specific decision on what's going to 11 be delivered. 12 Q. There was no -- there was no guarantee of U.S. 13 origin? 14 A. Right, exactly. There was no guarantee. 15 Q. But you might supply U.S. origin? 16 A. Oh, absolutely. 17 Q. And, in fact, when you told Mr. Pascu that you 18 may provide a deep sea cargo, you meant something that 19 would most likely be U.S. origin? 20 A. Correct. 21 Q. Or you would do Asian origin? 22 A. Correct. 23 Q. Now, with regard to Joint Exhibit 5, if you 24 could take a look at that, sir. And that is the Tricon 25 terms and conditions. Mr. Lee asked you about</p>	<p style="text-align: right;">339</p> <p>1 A. In a CFR deal, yes, it does, because we're the 2 ones selecting the vessel and negotiating the quantity 3 to be loaded on the vessel. 4 Q. And, similarly, with regard to ship period 5 versus arrival at destination, isn't that exactly what 6 Mr. Pascu asked to be changed? 7 A. Yeah. He asked to change the wording that we 8 had that our system used and I believe I agreed to it. 9 Q. Yeah, I think you agreed to it and that's 10 because you thought it meant the same thing? 11 A. Yeah, absolutely. 12 Q. Mr. Rajevac, have -- when you used to work as 13 an ops specialist, did you ever have occasion where you 14 loaded material from a U.S. Gulf port that had been 15 stored with foreign materials stored in a bonded tank? 16 A. Yes, I have. 17 Q. Okay. Can you tell me about that experience? 18 A. I had an instance of a different product, MEG, 19 where the product was of Mexican origin and it was 20 intended for sale in Europe. And there was a -- there 21 was no vessel directly sailing from Mexico to Europe so 22 what we did is we took a vessel that met the timing that 23 we agreed to with the supplier, brought it into the U.S. 24 Gulf, stored it in a bonded tank, which preserved the 25 Mexican origin.</p>

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<p style="text-align: right;">340</p> <p>1 We stored it for probably three or four</p> <p>2 days and then a different vessel from U.S. Gulf to</p> <p>3 Europe loaded it and sent it to Europe and we still got</p> <p>4 the benefit of bringing the Mexican origin cargo into</p> <p>5 Europe.</p> <p>6 Q. And that is because on that second vessel,</p> <p>7 that second vessel loaded it in a U.S. port. That was</p> <p>8 the load port?</p> <p>9 A. Correct.</p> <p>10 Q. But the material was still of Mexican origin,</p> <p>11 not U.S. origin?</p> <p>12 A. Correct.</p> <p>13 MR. DIAZ-ARRASTIA: Pass the witness.</p> <p>14 JUDGE BENTON: Mr. Lee?</p> <p>15 MR. LEE: Just a few follow-up questions,</p> <p>16 if I may.</p> <p>17 RE-CROSS-EXAMINATION (9:18 a.m.)</p> <p>18 BY MR. LEE:</p> <p>19 Q. Looking at this Joint Exhibit No. 5, the sales</p> <p>20 contract, if the counterparty -- and let's look at</p> <p>21 Page 2 of 4. If a counterparty struck through the</p> <p>22 provision law and jurisdiction, instead of saying "Texas</p> <p>23 law" they put the "law of Singapore," that's something</p> <p>24 that you could agree to on behalf of Tricon?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">342</p> <p>1 to talk to somebody. I've never -- I've never been in</p> <p>2 such a situation so I don't really know how to answer</p> <p>3 that.</p> <p>4 Q. Okay. What if somebody came back -- and let's</p> <p>5 go back to my example then on number -- let's look at</p> <p>6 No. 3 on Page 2. If they struck through Texas law and</p> <p>7 said Singapore law, would you have to ask -- would you</p> <p>8 ask somebody within Tricon as to whether that was</p> <p>9 acceptable?</p> <p>10 A. More than likely what I would do at first is,</p> <p>11 yes, I would check with somebody and, say, "Hey, they're</p> <p>12 asking for Singapore instead of Texas." And I would</p> <p>13 say, "The transaction has nothing to do with Singapore</p> <p>14 so there's no reason to accept that," but if somebody --</p> <p>15 if Brad agreed to accept it, I would be happy to go back</p> <p>16 and accept it.</p> <p>17 Q. So you would go back to the trader in that</p> <p>18 situation and ask him?</p> <p>19 A. If he was available.</p> <p>20 Q. You'd ask somebody within Tricon. Correct?</p> <p>21 A. More than likely, yes.</p> <p>22 Q. And that would be true with all of these</p> <p>23 provisions if somebody struck through them. Correct?</p> <p>24 A. No, it wouldn't be.</p> <p>25 Q. Certainly with force majeure?</p>
<p style="text-align: right;">341</p> <p>1 Q. Okay. If the counterparty struck through the</p> <p>2 provision additional collateral requirement, that's</p> <p>3 something that you could accept on Tricon's behalf?</p> <p>4 A. Yes.</p> <p>5 Q. Same thing for the Incoterms?</p> <p>6 A. Correct.</p> <p>7 Q. Same thing for force majeure?</p> <p>8 A. Correct.</p> <p>9 Q. Same thing for transfer title and risk?</p> <p>10 A. Correct.</p> <p>11 Q. Taxes?</p> <p>12 A. Correct.</p> <p>13 Q. Arbitration on the next page?</p> <p>14 A. Yes.</p> <p>15 Q. Product use?</p> <p>16 A. Yes.</p> <p>17 Q. Price and payment?</p> <p>18 A. Yes.</p> <p>19 Q. Interest?</p> <p>20 A. Yes.</p> <p>21 Q. So if a counterparty -- what if a counterparty</p> <p>22 struck every one of these provisions? Do you have the</p> <p>23 authority to accept that on behalf of Tricon?</p> <p>24 A. Well, I have the authority, yes. Whether I</p> <p>25 would do it, the answer is probably not. I would have</p>	<p style="text-align: right;">343</p> <p>1 A. If somebody struck out force majeure</p> <p>2 completely?</p> <p>3 Q. Yes.</p> <p>4 A. Yes. I would probably check with somebody on</p> <p>5 that one.</p> <p>6 Q. What about on the taxes?</p> <p>7 A. Probably.</p> <p>8 Q. Arbitration?</p> <p>9 A. Same thing.</p> <p>10 Q. You'd check with somebody first?</p> <p>11 A. Yeah.</p> <p>12 Q. And is that because you understand that that</p> <p>13 might have an impact on how the deal was carried out?</p> <p>14 A. Correct.</p> <p>15 (The time is 9:21 a.m.)</p> <p>16 MR. LEE: I'll pass the witness.</p> <p>17 JUDGE BENTON: Mr. Diaz-Arrastia?</p> <p>18 MR. DIAZ-ARRASTIA: I have no further</p> <p>19 questions.</p> <p>20 JUDGE BENTON: Mr. Rajevac, bad news.</p> <p>21 You're excused.</p> <p>22 THE WITNESS: Okay. Thank you very much.</p> <p>23 JUDGE BENTON: Your next witness is a</p> <p>24 depo, I understand.</p> <p>25 MR. DIAZ-ARRASTIA: The next witness is</p>

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<p style="text-align: right;">344</p> <p>1 the depo of Mr. Pascu.</p> <p>2 JUDGE BENTON: And it lasts how long?</p> <p>3 MR. DIAZ-ARRASTIA: It's 45 minutes.</p> <p>4 JUDGE BENTON: Okay. Perfect. All right.</p> <p>5 Very good.</p> <p>6 MR. LEE: And just to -- we have not</p> <p>7 included -- we did not at this point intend to bring</p> <p>8 Mr. Pascu to testify.</p> <p>9 JUDGE BENTON: Okay. Very good.</p> <p>10 MR. LEE: He will testify live so this</p> <p>11 would be their --</p> <p>12 JUDGE BENTON: Very good.</p> <p>13 MR. LEE: -- their submissions.</p> <p>14 JUDGE BENTON: Understood.</p> <p>15 MR. LEE: Thank you.</p> <p>16 JUDGE BENTON: All right. Let's proceed.</p> <p>17 MR. LEE: And we expect to have our -- I</p> <p>18 think the next thing is the video --</p> <p>19 MR. DIAZ-ARRASTIA: The incomes video is</p> <p>20 Mr. Wilson, who will also be by video.</p> <p>21 MR. LEE: And somebody from my office is</p> <p>22 going to help us. We did those cuts so she should be</p> <p>23 here, but we might want to take a break after this so</p> <p>24 that she can set it up. It shouldn't take very long,</p> <p>25 but if we can sit through this if that's okay and then</p>	<p style="text-align: right;">346</p> <p>1 A. I went to school in Romania. I did my high</p> <p>2 school in Romania and then I done university studies in</p> <p>3 Romania. I've done my master's study in Houston at</p> <p>4 University of Houston.</p> <p>5 Q. Are you a native of Romania?</p> <p>6 A. Correct, yes.</p> <p>7 Q. And you attended university in Romania?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Where did you attend university in</p> <p>10 Romania?</p> <p>11 A. Academy of Academic Studies.</p> <p>12 Q. And where is that; what city?</p> <p>13 A. In Bucharest.</p> <p>14 Q. Did you get a degree?</p> <p>15 A. Yes.</p> <p>16 MR. DIAZ-ARRASTIA: Can you possibly --</p> <p>17 A. Bachelor degree.</p> <p>18 (This is the end of the playback of the</p> <p>19 edited version of the videotaped deposition of Laurentiu</p> <p>20 Paul Pascu that was originally taken on May 27, 2010.)</p> <p>21 MR. DIAZ-ARRASTIA: Are you able --</p> <p>22 JUDGE BENTON: Yeah, we can hear.</p> <p>23 JUDGE DAVIDSON: We need more volume.</p> <p>24 MR. DIAZ-ARRASTIA: Well, that's the</p> <p>25 problem we're having. The speakers aren't working.</p>
<p style="text-align: right;">345</p> <p>1 take a break.</p> <p>2 JUDGE BENTON: Okay. Yeah, that's what</p> <p>3 our plan is to break after this one.</p> <p>4 MR. LEE: I apologize.</p> <p>5 JUDGE BENTON: No problem.</p> <p>6 MS. LARSON: Is it possible to take a</p> <p>7 three-minute recess?</p> <p>8 JUDGE BENTON: Perfect. We're off the</p> <p>9 record for a short break.</p> <p>10 (Recess from 9:25 a.m. to 9:29 a.m.)</p> <p>11 JUDGE BENTON: Let's proceed.</p> <p>12 (At this time the edited version of the</p> <p>13 videotaped deposition of Laurentiu Paul Pascu that was</p> <p>14 originally taken on May 27, 2010, was played in the</p> <p>15 arbitration. The court reporter at the arbitration</p> <p>16 reported such proceedings and this is her transcription</p> <p>17 of same.)</p> <p>18 LAURENTIU PAUL PASCU,</p> <p>19 having been first duly sworn, testified as follows:</p> <p>20 EXAMINATION</p> <p>21 BY MR. DIAZ-ARRASTIA:</p> <p>22 Q. Sir, could you state your full name for the</p> <p>23 record, please?</p> <p>24 A. Laurentiu Paul Pascu.</p> <p>25 Q. Tell me where you went to school, sir.</p>	<p style="text-align: right;">347</p> <p>1 It's coming from the computer.</p> <p>2 JUDGE DAVIDSON: You need another minute</p> <p>3 or two to work on the speakers?</p> <p>4 MR. DIAZ-ARRASTIA: Yes, I think we do</p> <p>5 probably.</p> <p>6 JUDGE DAVIDSON: Then take -- I mean --</p> <p>7 MR. DIAZ-ARRASTIA: My apologies.</p> <p>8 JUDGE BENTON: All right. We're off the</p> <p>9 record again for a short break.</p> <p>10 (Recess from 9:30 a.m. to 9:36 a.m.)</p> <p>11 JUDGE BENTON: All right. We're back on</p> <p>12 the record. Let's proceed.</p> <p>13 (At this time the edited version of the</p> <p>14 videotaped deposition of Laurentiu Paul Pascu that was</p> <p>15 originally taken on May 27, 2010, was played in the</p> <p>16 arbitration. The court reporter at the arbitration</p> <p>17 reported such proceedings and this is her transcription</p> <p>18 of same.)</p> <p>19 LAURENTIU PAUL PASCU,</p> <p>20 having been first duly sworn, testified as follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. DIAZ-ARRASTIA:</p> <p>23 Q. Okay. Tell me where you went to school, sir.</p> <p>24 A. I went to school in Romania. I did my high</p> <p>25 school in Romania and then I done the university studies</p>

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<p style="text-align: right;">348</p> <p>1 in Romania. I done my master's study in Houston at the</p> <p>2 University of Houston.</p> <p>3 Q. Are you a native of Romania?</p> <p>4 A. Correct, yes.</p> <p>5 Q. You attended university in Romania?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Where did you attend university in</p> <p>8 Romania?</p> <p>9 A. Academy of Economic Studies.</p> <p>10 Q. And where is that, what city?</p> <p>11 A. In Bucharest.</p> <p>12 Q. Did you get a degree?</p> <p>13 A. Yes.</p> <p>14 Q. What was that degree?</p> <p>15 A. Bachelor degree.</p> <p>16 Q. In what year?</p> <p>17 A. 2001.</p> <p>18 Q. Did you have an area of concentration in your</p> <p>19 studies?</p> <p>20 A. Yes.</p> <p>21 Q. And what was that?</p> <p>22 A. Merchandise science and quality management.</p> <p>23 Q. Okay. And you said you have a master's degree</p> <p>24 from the University of Houston?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">350</p> <p>1 think that he was a trader in Vinmar. I am not -- I am</p> <p>2 not sure, but from my perspective, I think that he was a</p> <p>3 trader at Vinmar.</p> <p>4 Q. All right. He worked at Vinmar?</p> <p>5 A. He worked at Vinmar.</p> <p>6 Q. You're not sure whether he was a trader, but</p> <p>7 you think he was?</p> <p>8 A. He was having commercial responsibilities.</p> <p>9 Q. Okay. What does that mean to you?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Well, I think you said earlier that you</p> <p>12 believed that Rick Wilson was a trader. Is that</p> <p>13 correct?</p> <p>14 A. Yes, I said that.</p> <p>15 Q. Was Rick Wilson located -- when he worked at</p> <p>16 Vinmar, was Rick Wilson located in the same office where</p> <p>17 you were?</p> <p>18 A. As a job perspective?</p> <p>19 Q. Well, is that where he -- well, did he work in</p> <p>20 the same office where you worked?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Are you aware that a dispute has arisen</p> <p>23 between Tricon and Vinmar regarding a sale of mixed</p> <p>24 xylenes that occurred in July of 2008?</p> <p>25 A. Can you repeat that?</p>
<p style="text-align: right;">349</p> <p>1 Q. Okay. What master's degree is that?</p> <p>2 A. Master's of Business Administration.</p> <p>3 Q. Okay. And when did you get that degree?</p> <p>4 A. In 2009.</p> <p>5 Q. Okay. Are you currently employed by Vinmar?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. How long have you worked for Vinmar?</p> <p>8 A. Starting end of January 2006.</p> <p>9 Q. And when you went to work for Vinmar, what did</p> <p>10 you do for them?</p> <p>11 A. What is my position?</p> <p>12 Q. Well, what is your position at Vinmar today?</p> <p>13 A. Supply chain specialist.</p> <p>14 Q. How long have you worked at Vinmar as a supply</p> <p>15 chain specialist?</p> <p>16 A. From end of January 2006.</p> <p>17 Q. So that's the only job you have had at Vinmar?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember when Rick Wilson was a trader</p> <p>20 at Vinmar? Rick Wilson?</p> <p>21 A. Do I remember if when --</p> <p>22 Q. Do you remember him?</p> <p>23 A. I do remember him.</p> <p>24 Q. Okay. And He was a trader at Vinmar?</p> <p>25 A. I don't know his position. He -- he -- I</p>	<p style="text-align: right;">351</p> <p>1 Q. Are you --</p> <p>2 A. Sorry.</p> <p>3 Q. Are you aware that there is a dispute between</p> <p>4 Tricon and Vinmar about a transaction involving mixed</p> <p>5 xylenes in July of 2008?</p> <p>6 A. I'm aware that I have entered data for a</p> <p>7 business in 2008 about mixed xylene and the entity was</p> <p>8 Tricon. I'm not sure whether there is a dispute or not.</p> <p>9 Q. Mr. Pascu, if you would please look at the</p> <p>10 document that has been marked as Exhibit 29, which</p> <p>11 appears to be, if you'll look at the top, an e-mail sent</p> <p>12 by Rick Wilson to you.</p> <p>13 A. Okay.</p> <p>14 Q. And I think it says, "Laurentiu, I bought MX</p> <p>15 from Tricon. Please contact them and make the necessary</p> <p>16 arrangements. Rick."</p> <p>17 Did I read that correctly, sir?</p> <p>18 A. This phrase is saying what you read, yes.</p> <p>19 Q. Do you remember getting this e-mail from</p> <p>20 Mr. Wilson?</p> <p>21 A. Yes.</p> <p>22 Q. Do you understand that MX refers to mixed</p> <p>23 xylenes?</p> <p>24 A. Yes.</p> <p>25 Q. And is this the -- is this the first time that</p>

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<p style="text-align: right;">352</p> <p>1 you became involved in this -- with these mixed xylenes</p> <p>2 that Mr. Wilson bought from Tricon? Is this when you</p> <p>3 first heard about it?</p> <p>4 A. Might have been, yes.</p> <p>5 Q. You say it might have been. Might you have</p> <p>6 heard about it before?</p> <p>7 A. I don't think that I've heard about it before,</p> <p>8 but it was two years ago so --</p> <p>9 Q. Okay. If you had heard about it before, how</p> <p>10 would you have heard about it before?</p> <p>11 A. By e-mail, phone or person-in-person.</p> <p>12 Q. Well, this is the only e-mail like this that I</p> <p>13 have seen. Is it your -- well, let me put it this way.</p> <p>14 Is it your testimony that the best that</p> <p>15 you can remember today, this is the first time you heard</p> <p>16 about this transaction?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. Is this the typical way that you were</p> <p>19 told about transactions for which data needed to be</p> <p>20 entered?</p> <p>21 A. It is not unusual.</p> <p>22 Q. Okay. And when he says "make the necessary</p> <p>23 arrangements," what does Mr. Wilson mean by that?</p> <p>24 A. I don't know. From my perspective as a</p> <p>25 logistic person, it is to get the data entered into the</p>	<p style="text-align: right;">354</p> <p>1 A. Correct.</p> <p>2 Q. Payment terms?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 A. But besides these are datas required for a</p> <p>6 purchase order as the system is calling to be entered.</p> <p>7 Q. Okay. Excuse me. Can you repeat that?</p> <p>8 A. Besides the terms that you have mentioned --</p> <p>9 Q. Yes.</p> <p>10 A. -- there are other datas that the system</p> <p>11 requires to be entered.</p> <p>12 Q. Okay. And what would that be?</p> <p>13 A. There are -- there are many.</p> <p>14 Q. Give me some of them.</p> <p>15 A. It is the -- it is called seller into the</p> <p>16 system, if we are buying.</p> <p>17 Q. So the name of the seller?</p> <p>18 A. Right.</p> <p>19 Q. Or for the name of the buyer, if you are</p> <p>20 selling?</p> <p>21 A. If -- so if I'm entering the purchase</p> <p>22 confirmation, it's -- the name of the seller is a</p> <p>23 requirement is the company -- is the -- so the company</p> <p>24 that is --</p> <p>25 Q. Okay. And did you understand that in this</p>
<p style="text-align: right;">353</p> <p>1 system, making sure that the ship or the shipment gets</p> <p>2 arranged, and all the necessary, like the inspection,</p> <p>3 payment terms were -- all the items are in place for</p> <p>4 this shipment to go.</p> <p>5 Q. Okay. Is that what you understand by "the</p> <p>6 necessary arrangements"?</p> <p>7 A. From my point of view as a logistic</p> <p>8 dispatching specialist, yeah.</p> <p>9 Q. And that is entering the data in the ERB</p> <p>10 system?</p> <p>11 A. Correct, into SAP. Let's put it SAP.</p> <p>12 Q. Okay.</p> <p>13 A. It's called SAP.</p> <p>14 Q. Okay. And that would include price?</p> <p>15 A. Any data that is required by the system,</p> <p>16 correct.</p> <p>17 Q. And that data would include price?</p> <p>18 A. Among the multiple data is the price.</p> <p>19 Q. Okay. It would also include quantity?</p> <p>20 A. The quantity, correct.</p> <p>21 Q. Would it include date of delivery?</p> <p>22 A. Correct.</p> <p>23 Q. Quality of the material?</p> <p>24 A. Correct.</p> <p>25 Q. Payment method?</p>	<p style="text-align: right;">355</p> <p>1 case Mr. Wilson was telling you about a transaction</p> <p>2 where Tricon -- Vinmar would be buying?</p> <p>3 A. In this one, I understand that there is going</p> <p>4 to be a shipment of MX from Tricon to Vinmar.</p> <p>5 Q. Okay. Tricon is the seller; Vinmar is the</p> <p>6 buyer?</p> <p>7 A. That we are going to have a shipment from</p> <p>8 Tricon of MX --</p> <p>9 Q. Okay.</p> <p>10 A. -- to Vinmar.</p> <p>11 Q. And did you understand that Mr. Wilson was</p> <p>12 telling you that Tricon would be the seller and Vinmar</p> <p>13 would be the buyer?</p> <p>14 A. For that, yes, as the process system.</p> <p>15 Q. In this transaction?</p> <p>16 A. As the process system, yes.</p> <p>17 Q. Now, if you would turn to the second page of</p> <p>18 Exhibit 29, Mr. Pascu, this document -- these documents</p> <p>19 were produced to us by Vinmar in this order. And my</p> <p>20 question to you is, did you receive the documents that</p> <p>21 follow the first page of Exhibit 29 as an attachment to</p> <p>22 the e-mail that is the first page?</p> <p>23 A. Should have been.</p> <p>24 Q. Okay. You believe that you received all of</p> <p>25 these documents together?</p>

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<p style="text-align: right;">356</p> <p>1 A. Yes.</p> <p>2 Q. Mr. Pascu, can you tell me what Exhibit No. 30</p> <p>3 is?</p> <p>4 A. This is a view of our SAP data entry.</p> <p>5 Q. Okay. Did you enter the data that is in this</p> <p>6 document?</p> <p>7 A. I don't remember at that point of time. I</p> <p>8 think that might not have been me, but I don't remember.</p> <p>9 Q. Okay. But if you look at the very top where</p> <p>10 it says "Standard PO 4529980, created by Laurentiu"?</p> <p>11 A. Right.</p> <p>12 Q. Is that you when it is referring --</p> <p>13 A. Correct.</p> <p>14 Q. -- to Laurentiu?</p> <p>15 A. Correct.</p> <p>16 Q. So this says that this document is created by</p> <p>17 you?</p> <p>18 A. Okay. The initial input -- I'm not sure how</p> <p>19 this system works, but most likely the initial input at</p> <p>20 the time that the PO was created initially was created</p> <p>21 by me.</p> <p>22 Q. Well, I'm asking you just about what we see in</p> <p>23 this document, Exhibit 30 that you have in front of you.</p> <p>24 Did you enter this data in the system?</p> <p>25 A. If this is correct, "Created by Laurentiu,"</p>	<p style="text-align: right;">358</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. You said Mr. Anaya was a commercial</p> <p>3 trainee, but you don't know what that means?</p> <p>4 A. He was introduced to me as commercial trainee.</p> <p>5 I don't know what that means.</p> <p>6 Q. Okay. Did you work with Mr. Anaya?</p> <p>7 A. Right.</p> <p>8 Q. What work did you and Mr. Anaya do together?</p> <p>9 A. At this point of time, he was getting the</p> <p>10 logistic training. As a part of that logistic training,</p> <p>11 he was working under my supervision to get the logistic</p> <p>12 of the shipment going on.</p> <p>13 Q. So you were showing him how to do the</p> <p>14 logistical side of the business?</p> <p>15 A. Correct.</p> <p>16 Q. And with that work, you would give him certain</p> <p>17 assignments to do and then you would see how he did</p> <p>18 them? You would supervise his work?</p> <p>19 A. I would supervise his logistic work, yes.</p> <p>20 Q. Mr. Pascu, if you would look at Exhibit 31.</p> <p>21 Let's start from the bottom of the document going up.</p> <p>22 And at the bottom, does that appear to be an e-mail from</p> <p>23 Mr. Anaya to Mr. Wilson and you and Ana Campos?</p> <p>24 A. You are asking me whether this e-mail is</p> <p>25 addressed to me?</p>
<p style="text-align: right;">357</p> <p>1 I have entered the initial data, correct.</p> <p>2 Q. Okay. Do you have any reason to think anybody</p> <p>3 changed it after it was first entered by you?</p> <p>4 A. I don't remember. Should not be.</p> <p>5 Q. Would it be fair to say that in Exhibit 29,</p> <p>6 this document, Mr. Wilson was giving you the attachment</p> <p>7 so that you would know what data needed to be entered</p> <p>8 and what arrangements needed to be made?</p> <p>9 A. As a supply chain specialist, whenever I am</p> <p>10 receiving a document, and as we see here, I would start</p> <p>11 the necessary arrangements, which is including the data,</p> <p>12 so most likely it would have been that I seen this</p> <p>13 document and I have entered the data in SAP.</p> <p>14 Q. Okay. Would Mr. Wilson tell you that he had</p> <p>15 bought MX from Tricon if he had not?</p> <p>16 A. I don't know.</p> <p>17 Q. Mr. Pascu, who is Eduardo Anaya?</p> <p>18 A. At that time, he was a commercial trainee.</p> <p>19 Q. And by "the time," you mean in July of 2008?</p> <p>20 A. At the time of July 24th, 2008.</p> <p>21 Q. Commercial trainee?</p> <p>22 A. He was at that time a commercial trainee, but</p> <p>23 he was in his period of getting the logistic training as</p> <p>24 part of this part of training.</p> <p>25 Q. Okay. Tell me, what is a commercial trainee?</p>	<p style="text-align: right;">359</p> <p>1 Q. Well, yes. Is it addressed to you and Ms. --</p> <p>2 well, is it -- let me put it this way.</p> <p>3 At the bottom, does that appear to you to</p> <p>4 be an e-mail from Eduardo Anaya that is addressed to</p> <p>5 Mr. Wilson, to you and to Ana Campos?</p> <p>6 A. Correct.</p> <p>7 Q. Do you remember receiving this e-mail?</p> <p>8 A. Should have been.</p> <p>9 Q. Okay. By the way, who is Ana Campos?</p> <p>10 A. Is -- she is our logistic -- I don't know the</p> <p>11 exact function that she -- but she is working with me</p> <p>12 for this project, logistic duties.</p> <p>13 Q. Okay. Is she your superior or somebody who</p> <p>14 works under you or at the same level?</p> <p>15 A. I think that we are on the same level, but she</p> <p>16 is still under my supervision.</p> <p>17 Q. So Ms. Campos is under your supervision?</p> <p>18 A. Yes.</p> <p>19 Q. In this e-mail, at the bottom is dated also</p> <p>20 July 24th at 4:03 in the afternoon.</p> <p>21 A. Okay.</p> <p>22 Q. Is that correct?</p> <p>23 A. It seems that it was transmitted, was recorded</p> <p>24 as 4:03 in the afternoon.</p> <p>25 Q. Okay. So it is in the same day as Exhibit 29,</p>

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<p style="text-align: right;">360</p> <p>1 but while Exhibit 29 is at 10:15 in the morning, 2 Exhibit 31 is about 4:00 in the afternoon? 3 A. Seems to be recording July 24th. 4 Q. Okay. Did you instruct Mr. Anaya to get in 5 touch with Mr. Wilson to get information? 6 A. I don't remember, but most likely. 7 Q. Okay. And Mr. Anaya tells Mr. Wilson, "Rick, 8 I will do the follow-up from the logistics point of view 9 of this operation." 10 Did you give Mr. Anaya that assignment, to 11 do the follow-up from the logistics -- 12 A. Yes. 13 Q. -- point of view of this operation? 14 And then he says, "To complete the order, 15 we just need the port of origin of this product." Do 16 you see where it says that? 17 A. Yes. 18 Q. Is that information that would be entered into 19 this ERB or SAP system we've talked about? 20 A. It is -- the port of origin is required for 21 our arrangements for the shipments. 22 Q. Okay. And if you will look at the note, the 23 next note above, which appears to be a note from 24 Mr. Wilson addressed to Mr. Anaya and to you and to 25 Ms. Campos.</p>	<p style="text-align: right;">362</p> <p>1 A. Okay. 2 Q. "Most likely USG"? 3 A. Okay. 4 Q. Do you remember getting that? 5 A. I should have got this e-mail. 6 Q. So just to be clear, Exhibits 30, 33 and 32 7 are all different parts of the same document that would 8 appear on your computer screen? 9 A. Yes, sir. 10 Q. That -- and in order to see the entire 11 document, you would have to scroll from left to right on 12 your computer screen? 13 A. This screen, yes. 14 Q. Am I correct? 15 A. Yes. 16 Q. And the image that you would see on the 17 left-hand side of your computer screen would be 18 Exhibit 30. Correct? 19 A. This would be the first screen. 20 Q. Okay. 21 A. And then you have to roll -- scroll to get to 22 the 32 and 33. 23 Q. All right. So Exhibit 30 would be on the 24 left-hand side of your computer screen. And then as you 25 scroll to the right, you would first see Exhibit 32 and</p>
<p style="text-align: right;">361</p> <p>1 A. Okay. 2 Q. And it appears to be a reply to the e-mail 3 from Mr. Anaya that we were just talking about. 4 Correct? 5 A. Correct. 6 Q. Dated on July 25 at 10:33 in the morning, the 7 next morning, after the e-mail at the bottom of 8 Exhibit 31. Correct? 9 A. Correct. 10 Q. And all -- and all of these are referring 11 PO 459980, which is the same PO referred to in 12 Exhibit 30. Correct? 13 A. Correct. 14 Q. So all of this appears to be relating to the 15 sale by Tricon to Vinmar. Would that be correct? 16 A. It appears to be related to this purchase 17 confirmation. 18 Q. Okay. And Mr. Wilson says to -- well, first, 19 do you remember receiving this e-mail from Mr. Wilson, 20 the one from July 25th, 2008, at 10:33 a.m.? 21 A. I should have -- 22 Q. Okay. 23 A. -- received it. 24 Q. Okay. And he tells Mr. Anaya, "Re: Origin, We 25 won't know until we declare discharge port."</p>	<p style="text-align: right;">363</p> <p>1 eventually you would get to Exhibit 33? 2 A. Correct. 3 Q. Is there anything in Exhibits 30, 32 or 33 4 that indicate the origin of the product? 5 A. It shows here. 6 Q. Yes. In this document -- 7 A. In these documents? 8 Q. In these documents, is there anything that 9 indicates the origin of the product? 10 A. In these three papers? 11 Q. In these three papers. 12 A. Nothing. 13 Q. Mr. Pascu, where did you get the information 14 that you would input into Exhibits 30, 32 and 33? 15 A. Might have been from these (indicating). 16 Q. Exhibit 29? 17 A. Paperwork, yes. 18 Q. Would it have come from Rick Wilson in any 19 case? 20 A. Might have been from this paperwork. 21 Q. Would the information that was put into things 22 like Exhibits 32, 33 and -- Exhibits 30, 32 and 33 23 generally come from the trader? 24 A. Correct. 25 Q. And in this transaction, Mr. Wilson was the</p>

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<p>364</p> <p>1 trader?</p> <p>2 A. In my perspective, yes.</p> <p>3 Q. Mr. Pascu, have you seen Exhibit 34 before</p> <p>4 today?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What is Exhibit 34?</p> <p>7 A. It is a purchase confirmation.</p> <p>8 Q. Okay. And it relates to PO No. 4529980.</p> <p>9 Right?</p> <p>10 A. Correct.</p> <p>11 Q. Which we have established is the purchase</p> <p>12 order for the transaction between Tricon and Vinmar that</p> <p>13 we're here about. Correct?</p> <p>14 A. It is the data as entered as -- in the SAP for</p> <p>15 the purchase confirmation.</p> <p>16 Q. Did you prepare Exhibit 34?</p> <p>17 A. I don't remember.</p> <p>18 Q. How was Exhibit No. 34 or documents like --</p> <p>19 how are Vinmar's purchase order confirmations prepared?</p> <p>20 A. What do you mean?</p> <p>21 Q. Well, generally, how are they prepared?</p> <p>22 A. Data is entered in this case.</p> <p>23 Q. And that automatically generates a purchase</p> <p>24 order confirmation?</p> <p>25 A. Upon printing this document.</p>	<p>366</p> <p>1 A. It was the document that was generated based</p> <p>2 on the input on the exhibit.</p> <p>3 Q. For this transaction?</p> <p>4 A. Basis of the input that Rick Wilson has</p> <p>5 provided to us.</p> <p>6 Q. Well, my question is, Exhibits 29 and 34</p> <p>7 relate to the same transaction?</p> <p>8 A. I don't know. I'm saying that the data</p> <p>9 entered into SAP relates to the attachment that Rick</p> <p>10 Wilson has sent to us and was processed through SAP.</p> <p>11 This is what I know.</p> <p>12 Q. And the attachment that Rick Wilson sent to</p> <p>13 you is the attachment that is in Exhibit 29. Correct?</p> <p>14 A. Right.</p> <p>15 Q. And Exhibit 34 relates to the attachment that</p> <p>16 is part of Exhibit 29?</p> <p>17 A. It is based on the -- on the input data from</p> <p>18 Exhibit 29.</p> <p>19 Q. 29?</p> <p>20 A. Yes.</p> <p>21 Q. So if -- within Vinmar if you wanted to print</p> <p>22 a PO, what would you do?</p> <p>23 A. You first have to get the approval of the</p> <p>24 trader that that data is correct.</p> <p>25 Q. Okay. And then what do you do?</p>
<p>365</p> <p>1 Q. So Exhibit 34 is Vinmar's purchase order</p> <p>2 confirmation for the mixed xylenes that Rick Wilson</p> <p>3 bought that are the subject of the July 24th e-mail to</p> <p>4 you that's Exhibit No. 29?</p> <p>5 A. I know there is a paperwork called purchase</p> <p>6 confirmation that is issued by SAP system whenever we</p> <p>7 press the print button.</p> <p>8 Q. Okay. And you say purchase confirmation, but</p> <p>9 the title of this document actually says Purchase Order</p> <p>10 Confirmation, does it not, sir?</p> <p>11 A. Okay. Sorry.</p> <p>12 Q. Am I right?</p> <p>13 A. We name it as PO.</p> <p>14 Q. Okay.</p> <p>15 A. But the name of the document as shows here</p> <p>16 Purchase Order Confirmation or the data that you are</p> <p>17 referring is named Purchase Order Confirmation.</p> <p>18 Q. Okay. But within Vinmar, this is the document</p> <p>19 that you refer to as your PO?</p> <p>20 A. Correct.</p> <p>21 Q. And what I am asking you -- what I asked you a</p> <p>22 moment ago was whether this PO, Exhibit 34, is the PO</p> <p>23 that was generated in connection with the transaction</p> <p>24 where Rick Wilson bought MX from Tricon that he informed</p> <p>25 you about in Exhibit 29?</p>	<p>367</p> <p>1 A. We send these for his review and approval.</p> <p>2 Q. Well, physically what do you do? Is there</p> <p>3 some buttons in your computer that you have to push to</p> <p>4 print a PO?</p> <p>5 A. Yes, you have to push a button.</p> <p>6 Q. That says like "Print PO" or something like</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And before you do that, you have to get</p> <p>10 approval from the trader that the information is</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. And it is the practice of Vinmar not to print</p> <p>14 a purchase order until the logistics people confirm with</p> <p>15 the trader that the information is correct?</p> <p>16 A. I would say yes.</p> <p>17 MR. LEE: May I have --</p> <p>18 Q. Would you --</p> <p>19 MR. LEE: -- one moment to --</p> <p>20 Q. (BY MR. DIAZ-ARRASTIA) If you would take a</p> <p>21 look at --</p> <p>22 (Playback of videotaped was stopped at</p> <p>23 this time.)</p> <p>24 MR. LEE: I just want to make an offer of</p> <p>25 optional completeness at this point. There was a skip.</p>

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<p style="text-align: right;">368</p> <p>1 And if -- for the record, I think to understand the</p> <p>2 testimony, it's helpful just on Page 52 of Mr. Pascu's</p> <p>3 deposition at Line 19 through Line 25, that little</p> <p>4 section was omitted where the question was, "Was that</p> <p>5 done before Exhibit 34 was printed?"</p> <p>6 Answer: "I don't remember."</p> <p>7 Question: "Okay. You don't remember if</p> <p>8 you printed it?"</p> <p>9 Answer: "I don't remember if I printed</p> <p>10 it, yes, sir."</p> <p>11 Question: "If it was not you who printed</p> <p>12 it, who would have?"</p> <p>13 "Anyone that has access to the</p> <p>14 information."</p> <p>15 JUDGE BENTON: Okay. Very good.</p> <p>16 MR. LEE: Thank you.</p> <p>17 (Playback of videotape was started again</p> <p>18 at this time.)</p> <p>19 Q. (BY MR. DIAZ-ARRASTIA) -- Exhibit 34, like I</p> <p>20 said again -- I think we have already established that</p> <p>21 it relates to PO 4529980?</p> <p>22 A. Correct.</p> <p>23 Q. And the date next to it is July 24, 2008.</p> <p>24 What late -- what date does that refer to?</p> <p>25 A. I don't know. I think that is the date when</p>	<p style="text-align: right;">370</p> <p>1 Q. Okay. If you will look at the bottom --</p> <p>2 A. Okay.</p> <p>3 Q. Well, let me ask you. Is this a standard form</p> <p>4 that Vinmar uses for all its PO's?</p> <p>5 A. As far to my knowledge, yes.</p> <p>6 Q. All right. You've seen a lot of PO's that</p> <p>7 Vinmar has generated, have you not, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And they all look pretty much like</p> <p>10 this? That's their standard form?</p> <p>11 A. For chemical, I would say yes.</p> <p>12 Q. And if you would look at the bottom of Page 2.</p> <p>13 A. Okay.</p> <p>14 Q. You see where it says, "Law and arbitration"?</p> <p>15 A. Okay.</p> <p>16 Q. Okay. Well, what I'm trying to figure out,</p> <p>17 sir, it's the language that we find, and let me read it</p> <p>18 for you and please confirm that I've read it correctly.</p> <p>19 It says, "Law and arbitration: Law of the</p> <p>20 State of Texas, USA, to apply. All disputes arising in</p> <p>21 connection with the present contract shall be finally</p> <p>22 settled under the Rules of Conciliation and Arbitration</p> <p>23 of the American Arbitration Association by one or more</p> <p>24 arbitrators appointed in accordance with the said</p> <p>25 rules."</p>
<p style="text-align: right;">369</p> <p>1 the data into SAP was entered and the date where the</p> <p>2 save button was pressed.</p> <p>3 Q. I understand that the docu -- that no one</p> <p>4 actually gets down and writes or types in all of this</p> <p>5 information. It's automatically created by the system?</p> <p>6 A. Okay.</p> <p>7 Q. And when you hit the "Print PO" button, it</p> <p>8 just generates this, depending on what information was</p> <p>9 entered?</p> <p>10 A. Okay.</p> <p>11 Q. Is that all correct?</p> <p>12 A. Yes.</p> <p>13 Q. Fine. Look at the second page of Exhibit 34.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see where there is a line that says</p> <p>16 "Origin"?</p> <p>17 A. Yes.</p> <p>18 Q. And it is blank. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. And would that be because no origin was</p> <p>21 entered into the system prior to this being printed?</p> <p>22 A. It would have been that the word here was not</p> <p>23 entered into the system, yes.</p> <p>24 Q. Before this was printed?</p> <p>25 A. Before this was printed.</p>	<p style="text-align: right;">371</p> <p>1 Did I read that correctly, sir?</p> <p>2 A. You read what is -- what is written here, yes.</p> <p>3 Q. Now, Mr. Pascu, if you would look at</p> <p>4 Exhibit 35. And I would call your attention to the</p> <p>5 bottom half of the first page of Exhibit 35.</p> <p>6 A. Okay.</p> <p>7 Q. Okay. And that is an e-mail from you to</p> <p>8 somebody at Tricon Energy whose address is</p> <p>9 vuk@triconenergy.com. Is that correct, sir?</p> <p>10 A. It appears to be, yes.</p> <p>11 Q. Okay. I believe that gentleman is Vuk</p> <p>12 Rajevac. Are you familiar with that name?</p> <p>13 A. I think that -- yes.</p> <p>14 Q. Okay. And it's an e-mail dated July 29th,</p> <p>15 2008, which you are sending at 4:08?</p> <p>16 A. It seems to be this way.</p> <p>17 Q. Okay. And it says, "Dear Vuk, Please find</p> <p>18 enclosed our comments on your sale confirmation. We</p> <p>19 shall revert soon with our purchase order for your</p> <p>20 review." Did I read that correctly, sir?</p> <p>21 A. You stated this way, yes.</p> <p>22 Q. Now, if you would turn a couple of pages, the</p> <p>23 page at the bottom says VIN 5. Do you see that, sir?</p> <p>24 A. VIN 00 --</p> <p>25 Q. Several zeroes and 5.</p>

16 (Pages 368 to 371)

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<p style="text-align: right;">372</p> <p>1 A. Okay.</p> <p>2 Q. Okay. That is the -- what you are enclosing</p> <p>3 on the e-mail to Mr. Rajevac, is it not, to Vuk?</p> <p>4 A. Whatever this document it is here --</p> <p>5 Q. It says you are enclosing and sending to Vuk?</p> <p>6 A. I know that I have attached document. It</p> <p>7 seems like it could be this one. Now, but you are</p> <p>8 asking me this one. I don't know.</p> <p>9 Q. Okay. If you would compare, sir, this</p> <p>10 document, beginning on Page VIN 5, to the document that</p> <p>11 is on the second page of Exhibit 29.</p> <p>12 A. Okay.</p> <p>13 Q. Okay. And, in particular, if you will look at</p> <p>14 the top of both documents where there is a fax line.</p> <p>15 A. Okay.</p> <p>16 Q. They both say, "July 23, 2008, 10:53 a.m.,</p> <p>17 Tricon Energy, 713-963-9030."</p> <p>18 A. Correct.</p> <p>19 Q. Okay. And does it appear that except for some</p> <p>20 handwriting that there is an Exhibit 35 -- the</p> <p>21 attachment to Exhibit 35 and the attachment to</p> <p>22 Exhibit 29 are the same document?</p> <p>23 A. Now, without checking line by line, it seems</p> <p>24 that it could be the same document, yes.</p> <p>25 Q. Okay. Do you think they are the same</p>	<p style="text-align: right;">374</p> <p>1 A. Yes.</p> <p>2 Q. Okay. But the numbers that appear on the top</p> <p>3 right-hand corner you think are not yours?</p> <p>4 A. I think they are not mine.</p> <p>5 Q. Do you know whose handwriting that is?</p> <p>6 A. No.</p> <p>7 Q. Okay. The numbers on the top right-hand</p> <p>8 corner are 4529980. Correct?</p> <p>9 A. Correct.</p> <p>10 Q. Which is the same as the PO number that we</p> <p>11 have been looking at?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And you also think that the numbers on</p> <p>14 the lower left-hand corner are not yours?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And do you know whose handwriting that</p> <p>17 is?</p> <p>18 A. No.</p> <p>19 Q. If you will look under the credit terms.</p> <p>20 A. Okay.</p> <p>21 Q. It's a little hard to see, but there is some</p> <p>22 words that were scratched out. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Did you do that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">373</p> <p>1 document?</p> <p>2 A. If you allow me to check line by line.</p> <p>3 Q. Sure. Go ahead.</p> <p>4 A. Then it appears to be the same document.</p> <p>5 However, I'm not yet in my state of mind to check each</p> <p>6 line to make sure, but it seems to be the same document,</p> <p>7 yes.</p> <p>8 Q. Okay. You don't have any reason to think they</p> <p>9 are different documents?</p> <p>10 A. I would -- I would not have reason.</p> <p>11 Q. Okay. Do you recognize the handwriting that</p> <p>12 is on Exhibit 35 -- on the attachment on Exhibit 35?</p> <p>13 A. Yes.</p> <p>14 Q. Is it yours?</p> <p>15 A. I recognize that this modification, this</p> <p>16 handwriting here is mine.</p> <p>17 Q. Okay.</p> <p>18 A. That this one -- the top one and the bottom</p> <p>19 one are not mine. And on the second page, seems that it</p> <p>20 is mine, mine and yes.</p> <p>21 Q. Okay. Just to make the record clear, on the</p> <p>22 first page some writing that is on the left margin of</p> <p>23 the document that says, "Arrival at destination" --</p> <p>24 A. Okay.</p> <p>25 Q. -- you believe that is your handwriting?</p>	<p style="text-align: right;">375</p> <p>1 Q. Then on the second page under No. 2,</p> <p>2 Demurrage, there is the word -- someone wrote in "Time</p> <p>3 bar is 60 days."</p> <p>4 A. Correct.</p> <p>5 Q. Is that your handwriting?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Under 7, Transfer of Title and Risk, it</p> <p>8 says, "As per Incoterms 2000." Is that your</p> <p>9 handwriting?</p> <p>10 A. Correct, yes.</p> <p>11 Q. Okay. And, again, there are on paragraphs --</p> <p>12 on Page 2 of the document, which is VIN No. 6, there are</p> <p>13 checkmarks by Paragraphs 1, 2, 3, 4 and 5. Correct?</p> <p>14 A. I can see those checkmarks, yes.</p> <p>15 Q. Are those yours?</p> <p>16 A. Seems to be, yes.</p> <p>17 Q. Okay. And on 7 and 7-A there again is some</p> <p>18 language that has been crossed out. Do you see that,</p> <p>19 sir?</p> <p>20 A. Yes, I do see.</p> <p>21 Q. Did you do that?</p> <p>22 A. I might have done, yes.</p> <p>23 Q. Okay. Does that look like your mark?</p> <p>24 A. Yes.</p> <p>25 Q. And I think that is all the handwriting on the</p>

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<p style="text-align: right;">376</p> <p>1 document. Is that correct?</p> <p>2 A. Yes, seems to be.</p> <p>3 Q. Okay. So -- are the -- is the handwriting</p> <p>4 that we have been looking at, is that what you referred</p> <p>5 to as your comments on the sale confirmation?</p> <p>6 A. Correct.</p> <p>7 Q. But my question, sir, was, if you didn't</p> <p>8 scratch anything out, if you didn't make a</p> <p>9 Mark, if you didn't write anything, that meant that you</p> <p>10 had no comment about that. Is that so?</p> <p>11 A. As the ones mentioned before, on all the other</p> <p>12 ones I did not have any comment from a logistic point of</p> <p>13 view.</p> <p>14 Q. Okay. All right. And you sent this to Vuk at</p> <p>15 Tricon on July 29th at 4:08 in the afternoon. Correct?</p> <p>16 A. Seems to be, yes.</p> <p>17 Q. Okay, Mr. Pascu, let's take a look now at</p> <p>18 Exhibit 36.</p> <p>19 A. Okay.</p> <p>20 Q. It appears to be an e-mail from you to Rick</p> <p>21 Wilson. Is that correct, sir?</p> <p>22 A. It appears to be, yes.</p> <p>23 Q. And it's dated July 29th, 2008, at 11:54 a.m.?</p> <p>24 A. Okay.</p> <p>25 Q. And the subject is PO 4529980, 5,000 metric</p>	<p style="text-align: right;">378</p> <p>1 Q. Yeah. Do your comments in Exhibit 35 say</p> <p>2 anything about the origin of the MX?</p> <p>3 A. My comments are referring strictly to a</p> <p>4 shipment.</p> <p>5 Q. Okay. Do they say anything about the origin</p> <p>6 of the MX?</p> <p>7 A. My comments do not say anything about the</p> <p>8 origin.</p> <p>9 Q. Okay. Going back to Exhibit 36, if you will</p> <p>10 look right before the sign-off on your e-mail to</p> <p>11 Mr. Wilson, it says, "If you have a right contact person</p> <p>12 would be great. I can make contact and discuss. Thank</p> <p>13 you."</p> <p>14 A. Okay.</p> <p>15 Q. You are asking Mr. Wilson to tell you who the</p> <p>16 contact person at Tricon should be?</p> <p>17 A. Logistic person, yes.</p> <p>18 Q. Yeah. And that would have been Mr. Rajevac?</p> <p>19 A. I have been told that Mr. Rajevac is going to</p> <p>20 handle the logistics.</p> <p>21 Q. Okay. So did Mr. Wilson tell you that you</p> <p>22 should be contacting Vuk Rajevac?</p> <p>23 A. I don't remember whether it was Rick or -- but</p> <p>24 it might have been Rick. I don't remember how I got to</p> <p>25 know that Mr. Rajevac is the logistics person.</p>
<p style="text-align: right;">377</p> <p>1 tons of MX. Correct?</p> <p>2 A. Correct.</p> <p>3 Q. That is, by the way, the same subject line as</p> <p>4 you used in Exhibit 34, the e-mail to mister to -- Vuk</p> <p>5 Rajevac. Correct?</p> <p>6 A. You are asking me whether the same subject --</p> <p>7 Q. Same subject line?</p> <p>8 A. -- line as -- okay. Yes.</p> <p>9 Q. Okay. And you tell Mr. Wilson, "Please find</p> <p>10 my comments on this sale contract." Correct?</p> <p>11 A. Correct. It's written this way, yes.</p> <p>12 Q. Yes. It appears to me that what you are</p> <p>13 sending Mr. Wilson with your e-mail at -- on July 29th,</p> <p>14 2008, at 11:54 is what you also sent Mr. Rajevac later</p> <p>15 in that day, is that correct, your comments on this</p> <p>16 sales contract?</p> <p>17 A. It appears to be, yes.</p> <p>18 Q. Okay. So just before noon on July 29th, you</p> <p>19 had shown Mr. Wilson the comments that you later gave to</p> <p>20 Vuk Rajevac at 4:00 in the afternoon the same day?</p> <p>21 A. Appears to be, yes.</p> <p>22 Q. Now, in your comments on Exhibit 35, is there</p> <p>23 anything in there that talks about the origin of the</p> <p>24 product or the material?</p> <p>25 A. You are asking me whether this document is --</p>	<p style="text-align: right;">379</p> <p>1 Q. But somebody had to tell you that?</p> <p>2 A. Right.</p> <p>3 Q. Okay. And so somebody had to respond to your</p> <p>4 e-mail at 11:54 a.m. -- that's Exhibit 36 -- to tell</p> <p>5 you, "Contact Vuk Rajevac"?</p> <p>6 A. There is a way that I got information that Vuk</p> <p>7 is the logistics person, yes, you are correct.</p> <p>8 Q. You don't remember how?</p> <p>9 A. I don't remember how.</p> <p>10 Q. But somebody had to give you that information?</p> <p>11 A. Somebody gave me that information.</p> <p>12 Q. And somebody gave you that information after</p> <p>13 you sent Exhibit 36?</p> <p>14 A. Appears to be, yes.</p> <p>15 Q. Because you need to send it to Mr. Rajevac at</p> <p>16 4:00 that afternoon?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. If you would look now, Mr. Pascu, at</p> <p>19 Exhibit No. 37. And, again, I would call your attention</p> <p>20 to the bottom half of the first page --</p> <p>21 A. Okay.</p> <p>22 Q. -- which appears to be an e-mail from Vuk</p> <p>23 Rajevac to you. Correct?</p> <p>24 A. Correct.</p> <p>25 Q. Dated July 29th, 2008, at 4:43 p.m.?</p>

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<p style="text-align: right;">380</p> <p>1 A. Appears to be recorded this way, yes.</p> <p>2 Q. It's about -- oh, just a little over a</p> <p>3 half-hour after you sent him Exhibit 35. Correct?</p> <p>4 A. Seems to be this way, yes.</p> <p>5 Q. And the subject line is the same as in</p> <p>6 Exhibit 35 and in Exhibit 36. Correct?</p> <p>7 A. Seems to be, yes.</p> <p>8 Q. Re: PO 4529980, 5,000 metric tons of MX.</p> <p>9 Correct?</p> <p>10 A. Appears to be, yes.</p> <p>11 Q. Okay. And it says, "Hi Laurentiu, to answer</p> <p>12 your questions: No. 1, your comments on the contract</p> <p>13 well noted and accepted except for demurrage time bar,</p> <p>14 which is 90 days as per industrywide standard."</p> <p>15 Did I read that correctly, sir?</p> <p>16 A. Yes.</p> <p>17 Q. Did you understand that to mean that</p> <p>18 Mr. Rajevac was agreeing to all of your comments except</p> <p>19 for the demurrage time bar period?</p> <p>20 A. I don't know what he meant. I'm not Vuk to</p> <p>21 state this.</p> <p>22 Q. Do you have an understanding of what it means</p> <p>23 when somebody says, "Your comments on the contract well</p> <p>24 noted and accepted"?</p> <p>25 A. No, I don't.</p>	<p style="text-align: right;">382</p> <p>1 telling you? "We will know origin when discharge port</p> <p>2 is discharged (sic)"?</p> <p>3 Aren't Mr. Rajevac and Mr. Wilson saying</p> <p>4 the same thing?</p> <p>5 A. Now, again, you are asking me to comment on</p> <p>6 something that I'm not involved with again. And,</p> <p>7 therefore, I would be cautious in understanding your</p> <p>8 question. But you are asking me -- let me put it this</p> <p>9 way.</p> <p>10 You are asking me whether Rick has</p> <p>11 answered to Eduardo's and my message, and I can tell you</p> <p>12 it appears to be, yes. Eduardo and I have asked Rick</p> <p>13 Wilson, "What is the port of origin?"</p> <p>14 And he asked -- "I don't know. Most</p> <p>15 likely it is going to be US Gulf Coast."</p> <p>16 Q. Okay. Before July 29th, the date of</p> <p>17 Exhibits 35, 36 and 37, before that date, did anyone</p> <p>18 ever tell you that Vinmar had to have MX of U.S. origin?</p> <p>19 A. Tell me again. I'm sorry.</p> <p>20 Q. Before July 29th, 2008, did anyone ever tell</p> <p>21 you that the MX that Vinmar was buying from Tricon had</p> <p>22 to be of U.S. origin?</p> <p>23 A. As mentioned, as a supply chain specialist, we</p> <p>24 are handling the data that is provided by the commercial</p> <p>25 person. We have entered the data and the data is --</p>
<p style="text-align: right;">381</p> <p>1 Q. Okay. You received Exhibit 37, didn't you,</p> <p>2 sir?</p> <p>3 A. Appears to be, yes.</p> <p>4 Q. Let's look at the item that is numbered 3 --</p> <p>5 A. Okay.</p> <p>6 Q. -- on Exhibit 37 near the bottom of the page.</p> <p>7 A. Okay.</p> <p>8 Q. And Mr. Rajevac tells you, "As far as the</p> <p>9 shipment details, we sold on CFR basis with arrival</p> <p>10 window. So once you declare the discharge port, by</p> <p>11 August 8, we will be able to decide whether to give you</p> <p>12 a deep sea cargo, which at that point will most likely</p> <p>13 already be on the water, or an Asian origin cargo."</p> <p>14 Did I read that correctly, sir?</p> <p>15 A. You read what appears to be here, yes.</p> <p>16 Q. Okay. If you would look at Exhibit 31</p> <p>17 quickly.</p> <p>18 A. 31.</p> <p>19 Q. There you go. Right in the middle of the page</p> <p>20 where Mr. Wilson is responding to Mr. Anaya and you.</p> <p>21 A. Okay.</p> <p>22 Q. He says, "Re: Origin. We won't know until we</p> <p>23 declare discharge port."</p> <p>24 A. Okay.</p> <p>25 Q. Doesn't that mean exactly what Mr. Rajevac is</p>	<p style="text-align: right;">383</p> <p>1 appear exactly what you see here in these -- in this</p> <p>2 (indicating).</p> <p>3 Q. And what we saw is that no data was ever</p> <p>4 entered about the origin of the material?</p> <p>5 A. Right.</p> <p>6 Q. So my question to you is, does that mean that</p> <p>7 no one ever told you that the MX had to be U.S. origin?</p> <p>8 A. Should be the case. Whatever data we get, we</p> <p>9 are inputting it into the system.</p> <p>10 Q. The only thing that you were told about the</p> <p>11 origin of the material is that you would know it once</p> <p>12 the discharge port was declared. Right?</p> <p>13 A. Again, whenever we are inputting, yes, the</p> <p>14 data, we want to make sure that the data is correct.</p> <p>15 We -- most likely, we did not get information about the</p> <p>16 date of origin; therefore, we did not input.</p> <p>17 (This is the end of the playback of the</p> <p>18 edited version of the videotaped deposition of Laurentiu</p> <p>19 Paul Pascu that was originally taken on May 27, 2010.)</p> <p>20 JUDGE BENTON: Okay. Let's take about a</p> <p>21 ten-minute break. With that, we're off the record.</p> <p>22 (Recess from 10:30 a.m. to 10:46 a.m.)</p> <p>23 MR. DIAZ-ARRASTIA: Okay. We're on the</p> <p>24 record. Let's proceed.</p> <p>25 (At this time the edited version of the</p>

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<p style="text-align: right;">384</p> <p>1 videotaped deposition of Richard W. Wilson, Ph.D., that 2 was originally taken on August 30, 2010, was played in 3 the arbitration. The court reporter at the arbitration 4 reported such proceedings and this is her transcription 5 of same.) 6 RICHARD W. WILSON, Ph.D., 7 having been first duly sworn, testified as follows: 8 EXAMINATION 9 BY MR. LEE: 10 Q. Good morning, Dr. Wilson. How are you today? 11 A. Just fine. 12 Q. Good. Would you mind giving us your full 13 name, sir? 14 A. Richard W. Wilson. 15 Q. Okay. And how old are you? 16 A. 51. 17 Q. What is it that you do today? 18 A. I'm the CEO of Cobalt Technologies & Renewable 19 Fuels & Chemicals Business. 20 THE REPORTER: Renewable fuels and what? 21 THE WITNESS: Chemicals Business. 22 Q. (BY MR. LEE) Do you mind telling me just a 23 little bit about what it is that Cobalt Technologies 24 does? 25 A. Well, the companies develop the technology to</p>	<p style="text-align: right;">386</p> <p>1 Q. When were you first employed by Amoco? 2 A. Hired in 1989. And right around the merger 3 time in 19 -- in 2000 -- 1999, 2000, I -- I went into my 4 first trading role. 5 Q. And that was with BP? 6 A. BP. 7 Q. And can you just generally describe what it 8 was that you were responsible for in your trading role 9 at BP? 10 A. My first role was a -- I was -- I was 11 responsible for midback office. Think accounting. 12 Think logistics. And then I went into a trading role. 13 And then I was put in charge of all the trading 14 operations in Australasia for products that came out of 15 BP's refineries or BP's joint ventures. 16 Q. When you served in the trading role, what 17 products were you buying, selling? 18 A. Mostly blended gasolines and diesel fuel. 19 There was -- we did some exporting of blend stocks into 20 the U.S. West Coast. 21 Q. Okay. How long were you in a trading role at 22 BP? 23 A. In trading roles, I went into trading 1999, 24 2000. 25 Q. So from 1999 to about 2001, you were an</p>
<p style="text-align: right;">385</p> <p>1 make bio fuels and biochemicals out of wood waste. And 2 my role is to commercialize that technology globally. 3 Q. Great. How long have you been the CEO of 4 Cobalt Technologies? 5 A. Two years. 6 Q. And you live here in California? 7 A. Palo Alto, California. 8 Q. Where is Cobalt Technologies headquartered? 9 A. Mountain View, California. 10 Q. I'll ask you a little bit about your 11 background, Dr. Wilson. Where did you grow up? 12 A. I grew up in Philadelphia, Pennsylvania. 13 Q. Where did you go to college? 14 A. Undergrad chemistry degree, UC San Diego, 15 Ph.D. chemical engineering, Lehigh. MBA, University of 16 Chicago. 17 Q. When did you graduate from UC San Diego? 18 A. 1981. 19 Q. And then there was another stop after UC in 20 San Diego? 21 A. Lehigh, Ph.D. chemical engineering, '89. 22 Q. And then what about after that? 23 A. University of Chicago, 1997. 24 Q. Was that an MBA or -- 25 A. MBA.</p>	<p style="text-align: right;">387</p> <p>1 individual trader at BP? 2 A. I first had a responsibility around midback 3 offices. So the way you get into trading is you learn 4 the -- the ebbs and flows of the paperwork. 5 Q. Okay. And after you spent a few months in the 6 back office, then you went into trading. Is that right? 7 A. That's right. 8 Q. And you served in that role until sometime in 9 2001? 10 A. That's right. 11 Q. So approximately two years of sort of 12 individual trading? 13 A. Rating -- supporting individual trading. 14 THE REPORTER: I'm sorry. I didn't hear 15 you. 16 THE WITNESS: Supporting individual 17 trading. 18 Q. (BY MR. LEE) And then after that two-year 19 stint as either logistics or trading, you then -- 20 A. Management. 21 Q. -- went into management. And you had a 22 trading operation that you were managing? 23 A. That's right. 24 Q. How many traders were you responsible for? 25 A. 18.</p>

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<p style="text-align: right;">388</p> <p>1 Q. And was this primarily products in Asia?</p> <p>2 A. In Australasia, so Singapore, New Zealand and</p> <p>3 Australia.</p> <p>4 Q. What were your basic management</p> <p>5 responsibilities?</p> <p>6 A. I was -- I was responsible for P&L. I was</p> <p>7 responsible for control.</p> <p>8 Q. And how long were you in the -- in a</p> <p>9 management role of the trading operation of BP?</p> <p>10 A. Well, I went -- it was circa 2001 into 2003.</p> <p>11 And then at that point I moved back from -- I was in</p> <p>12 Australia at the time. I moved back to the United</p> <p>13 States. I went into the chemicals business.</p> <p>14 My goal there was -- and my remit was to</p> <p>15 bring trading skills to a part of the business that was</p> <p>16 very dominated by technologists. And I was chosen for</p> <p>17 that role because of my technology and my trading</p> <p>18 background.</p> <p>19 Q. Okay. So the -- at least the concept was that</p> <p>20 you would bring your trading skill set over to the</p> <p>21 United States and --</p> <p>22 A. Well, into the chemical business and they were</p> <p>23 a global chemical business.</p> <p>24 Q. Okay. You mentioned you started at Vinmar in</p> <p>25 December of 2006?</p>	<p style="text-align: right;">390</p> <p>1 focused on MX right away because the economics of MX are</p> <p>2 closely tied to gasoline and I had experience in</p> <p>3 understanding the value of gasolines given my experience</p> <p>4 in Australia.</p> <p>5 Q. You said you left in October of 2008. Why did</p> <p>6 you leave Vinmar?</p> <p>7 A. Well, I had an opportunity to run a Silicon</p> <p>8 Valley renewable chemical business as a CEO so I was</p> <p>9 very much attracted to the opportunity to work on</p> <p>10 something that had social impact.</p> <p>11 Q. I want to talk to you about the summer of</p> <p>12 2008. And I guess really to get into this, let me ask</p> <p>13 you, where were you officing in the summer of 2008?</p> <p>14 A. The summer of 2008, I was at the home office</p> <p>15 in Chicago.</p> <p>16 Q. Had that always been the case?</p> <p>17 A. No.</p> <p>18 Q. All right.</p> <p>19 A. I spent a year commuting to Houston.</p> <p>20 Q. So your first year at Vinmar, you --</p> <p>21 A. Commuted.</p> <p>22 Q. -- were in the Houston office but your family</p> <p>23 was in Chicago?</p> <p>24 A. That's right.</p> <p>25 Q. Obviously, Dr. Wilson, I'm here to talk to you</p>
<p style="text-align: right;">389</p> <p>1 A. I think that's right, yeah.</p> <p>2 Q. And how long were you there?</p> <p>3 A. Until October 2008.</p> <p>4 Q. What were you responsible for at Vinmar?</p> <p>5 A. Well, that changed over time. I'd say that it</p> <p>6 was really a business development role. Before -- I</p> <p>7 think before I went into -- before I went into aromatics</p> <p>8 trading or before I had the remit of developing</p> <p>9 aromatics trading, I was actually buying and selling</p> <p>10 enzymes.</p> <p>11 So these are renewable replacements for</p> <p>12 chemicals. And it was a variety of countries, Brazil,</p> <p>13 Turkey, China and leveraged some of the supply resources</p> <p>14 that Vijay Goradia had.</p> <p>15 Q. And then I think you mentioned you were put in</p> <p>16 charge of the aromatics trading?</p> <p>17 A. That's right.</p> <p>18 Q. How did that happen?</p> <p>19 A. It was -- well, the enzyme business didn't</p> <p>20 generate a multimillion dollar P&L fast enough so we</p> <p>21 decided that we would progress aromatics trading. And</p> <p>22 that was, I mean, roughly late 2007.</p> <p>23 Q. And what -- what's included in the aromatics</p> <p>24 family?</p> <p>25 A. Well, it was a remit to do anything. I</p>	<p style="text-align: right;">391</p> <p>1 about a dispute that exists between Tricon and Vinmar.</p> <p>2 And I take it that you're aware that Tricon has sued</p> <p>3 Vinmar over an alleged contract involving the sale of</p> <p>4 MX?</p> <p>5 A. That's right.</p> <p>6 Q. Okay. How were you involved in the events</p> <p>7 leading up to this alleged contract?</p> <p>8 A. I was the trader responsible for the Vinmar</p> <p>9 side of that trade.</p> <p>10 Q. Why were you interested in purchasing MX?</p> <p>11 A. Because I was -- well, first of all, the</p> <p>12 trading that I was attempting to build was based on</p> <p>13 purchasing in the United States and have MX into Asia.</p> <p>14 Particularly, the arrangement I had was that Formosa, a</p> <p>15 Taiwanese company, was frustrated that they were a big</p> <p>16 buyer of MX and the Asian traders -- well, what happens</p> <p>17 is Asia is the suppliers will sell to certain traders</p> <p>18 and those traders essentially will collectively push the</p> <p>19 price up.</p> <p>20 And my trading activity is all about</p> <p>21 essentially breaking the back of that monopoly, and what</p> <p>22 that did was that gave me privileged access to sell</p> <p>23 material to Formosa in Taiwan, buy in the U.S., sell</p> <p>24 to -- sell to Formosa and hopefully expand that to other</p> <p>25 consumers of MX.</p>

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<p style="text-align: right;">392</p> <p>1 Q. Right. And so how was the U.S. origin aspect</p> <p>2 of the MX, how is that essential to doing business with</p> <p>3 Formosa?</p> <p>4 A. Well, Formosa wanted material that didn't</p> <p>5 originate in Asia.</p> <p>6 Q. Do you know why?</p> <p>7 A. Because they wanted to reduce their exposure</p> <p>8 to Asian material so that they weren't subject to the --</p> <p>9 to the dominant -- the dominant supply control of the</p> <p>10 Asian traders.</p> <p>11 Q. Can you tell us why the -- why you approached</p> <p>12 Ed Leyman to assist in the purchase of MX?</p> <p>13 A. Two reasons. The first reason that -- was</p> <p>14 that I recognized that through transacting with Ed I</p> <p>15 would over time get exposure to all the supply sources</p> <p>16 that were available in MX and -- number one.</p> <p>17 So it was essentially an opportunity to</p> <p>18 learn about what's really out there, recognizing that MX</p> <p>19 is used in gasoline and also chemicals so it could</p> <p>20 physically be anywhere.</p> <p>21 The second reason I engaged Ed Leyman is</p> <p>22 that Vinmar's control environment did not include</p> <p>23 recorded tape recordings and Ed Leyman assured me that</p> <p>24 recordings were taped so I saw that as my opportunity to</p> <p>25 have some controlled environment over my activities.</p>	<p style="text-align: right;">394</p> <p>1 A. It was -- at the -- at the time that I was</p> <p>2 originally doing the deal, I -- Formosa actually was</p> <p>3 actively looking for product. So my first hope was that</p> <p>4 I can essentially do a back-to-back transition so --</p> <p>5 transaction so that I buy and sell simultaneously so I</p> <p>6 don't expose myself to market price moves.</p> <p>7 But as the evening in Taiwan played out,</p> <p>8 that was no longer a possibility. It was the end of the</p> <p>9 day. I decided to buy anyway. And the reason I decided</p> <p>10 to buy was that there was particular tightness in the</p> <p>11 United States at least in terms of gasoline blend</p> <p>12 stocks. So I was generally long and there were some</p> <p>13 signs of weakness in Asia.</p> <p>14 Q. Did you have any interest in purchasing open</p> <p>15 origin MX?</p> <p>16 A. No, because I had no place to sell it.</p> <p>17 Q. Were you willing to purchase MX if it wasn't</p> <p>18 of U.S. origin?</p> <p>19 A. No.</p> <p>20 Q. Did you ever authorize Ed Leyman to purchase</p> <p>21 anything but U.S. origin MX?</p> <p>22 A. Not that I remember.</p> <p>23 Q. If you had wanted -- let me ask you this. If</p> <p>24 you had wanted open origin MX, would you have gone to Ed</p> <p>25 Leyman?</p>
<p style="text-align: right;">393</p> <p>1 Q. Why was that important?</p> <p>2 A. Well, so there's no misunderstandings.</p> <p>3 Q. What -- I guess tape-recorded conversation, is</p> <p>4 that something that you had had experience with at BP?</p> <p>5 A. It's BP best practice.</p> <p>6 Q. Was it your understanding that Mr. Leyman</p> <p>7 would function as a neutral broker?</p> <p>8 A. Yes.</p> <p>9 Q. What does that -- what does that mean to you?</p> <p>10 A. That means he'll treat each party the same.</p> <p>11 He will keep me anonymous should I require that.</p> <p>12 Q. And I guess the -- what I want to focus in on</p> <p>13 today is this -- the discussions that you had with</p> <p>14 Mr. Leyman on July the 22nd, 2008. Okay?</p> <p>15 And do you remember that on that day you</p> <p>16 were in the market to purchase MX?</p> <p>17 A. That's right.</p> <p>18 Q. Okay. What did you tell Mr. Leyman about the</p> <p>19 origin of the MX that you wanted to purchase?</p> <p>20 A. I told Ed that I needed U.S. origin material</p> <p>21 and that my customer would only accept U.S. origin</p> <p>22 material.</p> <p>23 Q. And I think you told us earlier about your</p> <p>24 experience with Formosa. Was -- was this intended</p> <p>25 Formosa?</p>	<p style="text-align: right;">395</p> <p>1 A. If I wanted material from Asia, I would not</p> <p>2 have gone to Ed Leyman, no.</p> <p>3 Q. Why?</p> <p>4 A. I would have went to an Asian broker who was</p> <p>5 better aware of what the deal opportunities were so I</p> <p>6 could have got a better price.</p> <p>7 Q. Where was Mr. Leyman located?</p> <p>8 A. I believe New York.</p> <p>9 Q. Do -- does Exhibit 6, does that appear to be</p> <p>10 instant message exchanges between you and Ed Leyman?</p> <p>11 A. Appears to be, yes.</p> <p>12 Q. Having looked at that, does that -- do you</p> <p>13 recall any of these discussions that you had with</p> <p>14 Mr. Leyman on July 22nd, 2008?</p> <p>15 A. Vaguely.</p> <p>16 Q. Okay. Around I guess it's 9:34 a.m.</p> <p>17 Mr. Leyman tells you that he's got a firm offer for 5 KT</p> <p>18 MX FOB H/TC Corpus, 5 KT any August at 4.10, 5211/20 BR.</p> <p>19 Could you tell us what that meant to you?</p> <p>20 A. FOB means that I'm purchasing a parcel that's</p> <p>21 at the port and that port is Houston, Texas City or</p> <p>22 Corpus Christi, all which are in the United States,</p> <p>23 5,000 metric tons. I believe the -- any August refers</p> <p>24 to the shipping date. 4.10 is the price. 5 -- 5211/20</p> <p>25 is the specification.</p>

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<p style="text-align: right;">396</p> <p>1 Q. The -- what is the significance of his 2 reference to FOB H/TC or Corpus? 3 A. It means that I'm buying material out of 4 Houston that originates out of Houston, Texas City or 5 Corpus Christi. 6 Q. Would you consider that to be U.S. origin 7 material? 8 A. Yes. 9 Q. And was that consistent with your discussions 10 with Mr. Leyman? 11 A. That's right. 12 Q. I'm sorry. What was your understanding on 13 July 22nd or at least at this point in time as to that 14 Formosa's interest was? 15 A. They were -- they were looking to buy. 16 Q. If you look down a couple of lines at 17 10:00 a.m., Mr. Leyman mentions a second MX seller 18 asking if the buyer would purchase CFR main Asian ports, 19 5 KT MX, arrival basis loading USGC. 20 A. Uh-huh. 21 Q. Again, what is -- first of all, did you ask 22 Mr. Leyman for CFR opportunities? 23 A. No. He proposed that as a counter. 24 Q. What is -- what's a CFR offer? 25 A. CFR means that you purchase it on a delivery</p>	<p style="text-align: right;">398</p> <p>1 Q. When -- at that point in time did you learn 2 that the potential seller was Tricon? 3 A. I believe after the deal was done. 4 Q. Did you -- did you know anything about Tricon 5 before then? 6 A. Yes. 7 Q. What had you -- or what did you know about 8 Tricon? 9 A. I had been advised by other traders to avoid 10 Tricon. 11 Q. By other traders at Vinmar or outside of 12 Vinmar? 13 A. Outside of Vinmar. 14 Q. Okay. And then were there also, though, 15 discussions about where Vinmar would want the MX 16 delivered? 17 A. At some point -- well, in general -- so what 18 I -- I can't say specifically and I don't remember the 19 details, but what I do know, my agenda was to not 20 disclose who the seller was because of my concerns that 21 Vinmar was -- that, excuse me, Tricon was actually part 22 of the -- we'll call it the Asia trade of MX. 23 Q. And the Asian trade being what we discussed 24 earlier, the folks that were -- 25 A. Cornering the market.</p>
<p style="text-align: right;">397</p> <p>1 basis so you're incurring a price that includes shipping 2 costs, which means that you don't need to actually do 3 the shipping yourself. 4 Q. What was the significance of -- if any, of 5 Mr. Leyman's comment about loading USGC? 6 A. That indicated that the origin of this 7 material was the U.S. Gulf Coast and that pick-up 8 essentially the first half of August. 9 Q. Did you believe that Mr. Leyman had the 10 authority to accept on Vinmar's behalf terms that were 11 different than those that you had authorized him to 12 accept? 13 A. Mr. Leyman had specific instructions to buy 14 U.S. origin material only on my behalf. 15 Q. Okay. What was your understanding of the 16 origin of the MX for the deal that Mr. Leyman had 17 supposedly brokered? 18 A. It was always that it was U.S. origin but that 19 it could come from a variety of different ports in the 20 United States. 21 Q. What do you mean by that? 22 A. The M -- the MX would need to be in a tank at 23 some port. And I had afforded him the flexibility of 24 determining what port in the United States that material 25 could be picked up at.</p>	<p style="text-align: right;">399</p> <p>1 Q. -- involving in trying to build the market 2 price in Asia up -- 3 A. That's right. 4 Q. -- to artificial level? 5 A. That's right. 6 Q. "Ed, given Brad is selling out of USG, am I 7 getting 45 days from BL or 30, hopefully 45?" Could you 8 tell us what that means, sir? 9 A. What we're discussing are the payment terms 10 and the issue is that when you pick a material up in the 11 U.S. Gulf the clock starts ticking in terms of when you 12 have to make payment. So it's a working capital issue. 13 So I was attempting to negotiate longer terms, I 14 believe. 15 Q. And what did -- what did you mean by your 16 reference to USG? 17 A. U.S. Gulf. 18 Q. Was that your understanding of the purported 19 deal? 20 A. The origin of the -- of material was -- my 21 understanding -- my understanding was that it was U.S. 22 origin and that doesn't necessarily mean U.S. Gulf. 23 Q. Do you recall Mr. Leyman or anyone else 24 telling you on July 22nd that the product -- that the 25 product would likely originate from the Gulf Coast or</p>

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<p style="text-align: right;">400</p> <p>1 anything to that effect?</p> <p>2 A. He said that the port in the U.S. was still</p> <p>3 open.</p> <p>4 Q. Where did you get your understanding that</p> <p>5 Tricon would be selling out of at least at that time</p> <p>6 USG?</p> <p>7 A. They would be loaded -- the origin -- my</p> <p>8 understanding was that the origin that called -- the</p> <p>9 origin of the cargo was United States --</p> <p>10 Q. Okay.</p> <p>11 A. -- which may be the U.S. Gulf.</p> <p>12 Q. If Mr. Leyman had told you that Tricon was not</p> <p>13 guaranteeing U.S. origin, what would you have done?</p> <p>14 A. I wouldn't have bought the cargo. I had no</p> <p>15 place to sell it. I couldn't count on the Asian traders</p> <p>16 taking it.</p> <p>17 MR. LEE: I'm going to mark Exhibit 39.</p> <p>18 Q. (BY MR. LEE) Take a look at that, if you</p> <p>19 would, sir.</p> <p>20 MR. LEE: I had two of those. Sorry.</p> <p>21 (The following was a comment made by</p> <p>22 Mr. Lee during the playback.)</p> <p>23 MR. LEE: That's also Vinmar Exhibit 2.</p> <p>24 (End of comment made by Mr. Lee.)</p> <p>25 Q. (BY MR. LEE) Do you recognize Exhibit 39?</p>	<p style="text-align: right;">402</p> <p>1 A. Uh-huh. That's right.</p> <p>2 Q. And was that -- what's that based on?</p> <p>3 A. If -- a CFR deal means that the seller</p> <p>4 arranges freight so I didn't need to.</p> <p>5 Q. Then you went on to tell him lifting is first</p> <p>6 week of August. So they already had shipping arranged.</p> <p>7 What do you mean they -- the lifting was to be the first</p> <p>8 week of August?</p> <p>9 A. I meant that the -- my understanding of the</p> <p>10 deal with Tricon was that the material is going to be</p> <p>11 U.S. origin and that the pick-up was going to be in</p> <p>12 August.</p> <p>13 And the reason that was important was that</p> <p>14 I knew that Formosa had two windows of opportunity. The</p> <p>15 first -- I believe the first in September so I needed to</p> <p>16 ensure that the material actually arrived in September.</p> <p>17 It takes time to sail from the United States to Taiwan.</p> <p>18 Q. Just so that we're all clear, I want to make</p> <p>19 sure I understand the terminology. What do you mean by</p> <p>20 lifting?</p> <p>21 A. I mean the pick-up at the -- pick-up at the</p> <p>22 port, the lifting by the ship of the cargo, moving it</p> <p>23 from the tank into the cargo hold.</p> <p>24 Q. Who had told you that Tricon had already</p> <p>25 arranged the shipping?</p>
<p style="text-align: right;">401</p> <p>1 A. Yeah.</p> <p>2 Q. And are those e-mails that you exchanged with</p> <p>3 a gentleman named Nicholas Smith?</p> <p>4 A. That's right.</p> <p>5 Q. Who is Nicholas Smith?</p> <p>6 A. I believe he's a ship charterer. I just don't</p> <p>7 remember the name of the company that he dealt with.</p> <p>8 Q. Was -- how was Mr. Smith aware that you were</p> <p>9 in the market to buy MX on July 22nd, 2008?</p> <p>10 A. Well, because the first thing you need to do</p> <p>11 if you're guaranteeing a physical delivery is to make</p> <p>12 sure that you have the ship. So before you tell a</p> <p>13 customer, "I'm going to deliver on such and such date,"</p> <p>14 you'd be better be able to deliver it.</p> <p>15 So essentially what I did was I put on</p> <p>16 hold a ship that could pick up material in the United</p> <p>17 States.</p> <p>18 Q. Let me approach it this way, mister -- or</p> <p>19 Dr. Wilson. Why would you have been in contact with</p> <p>20 Mr. Smith on July 22nd to arrange shipping?</p> <p>21 A. So that I could ship MX to Asia from the</p> <p>22 United States.</p> <p>23 Q. At the last e-mail, which is at the top of</p> <p>24 Exhibit 39, you mentioned to Mr. Smith that the seller</p> <p>25 is handling freight?</p>	<p style="text-align: right;">403</p> <p>1 A. I think that was part of the CFR deal.</p> <p>2 Q. What does this -- Exhibit 39, what does that</p> <p>3 tell us about your understanding of the deal that you</p> <p>4 thought had been concluded between Tricon and Vinmar?</p> <p>5 A. My understanding was it was U.S. origin.</p> <p>6 Q. Let me show you what's previously been marked</p> <p>7 as Exhibit 15.</p> <p>8 (The following was a comment made by</p> <p>9 Mr. Lee during the playback.)</p> <p>10 MR. LEE: It's Joint Exhibit 5.</p> <p>11 (End of comment made by Mr. Lee.)</p> <p>12 Q. (BY MR. LEE) Do you recognize this e-mail</p> <p>13 exchange between you and Mr. Lockwood?</p> <p>14 A. Yes, vaguely.</p> <p>15 Q. Okay. What I want to ask you about right now</p> <p>16 is the e-mail that you sent to Mr. Lockwood there on</p> <p>17 July 23rd at about 3:28, so it's the one in the middle.</p> <p>18 A. Uh-huh.</p> <p>19 Q. And you asked, "Brad, could you please send me</p> <p>20 the RCAP for the shipping you arranged for this cargo?"</p> <p>21 What is -- what do you mean by RCAP?</p> <p>22 A. RCAP. So what that means is that the broker</p> <p>23 will supply, "Here's the ship. Here's the details."</p> <p>24 And I did that on the belief that the material was</p> <p>25 loading very soon in order for it to get to Asia in</p>

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<p style="text-align: right;">404</p> <p>1 time.</p> <p>2 Q. Now, Mr. Lockwood's response is that "We have</p> <p>3 a couple of different options to use." Do you see that?</p> <p>4 A. Yeah.</p> <p>5 Q. Was that consistent with your understanding of</p> <p>6 the deal as it had been relayed to you on July 22nd,</p> <p>7 2008?</p> <p>8 A. There is nothing in the statement that</p> <p>9 contradicts my understanding of the deal, and that was</p> <p>10 that he was going to provide to me U.S. origin material,</p> <p>11 but there was flexibility, specifically at what port in</p> <p>12 the United States that MX would be picked up at.</p> <p>13 Q. As of July 23rd, 2008, what was your</p> <p>14 understanding of the deal that purportedly had been</p> <p>15 concluded between Tricon and Vinmar?</p> <p>16 A. My understanding was that purchasing U.S.</p> <p>17 origin material of MX to arrive in Taiwan in</p> <p>18 September -- to arrive in Asia in September. I don't</p> <p>19 remember the details. I may not have nominated the port</p> <p>20 because I was reluctant to -- I was reluctant to</p> <p>21 disclose who my buyer was.</p> <p>22 Q. Let me show you what's previously been marked</p> <p>23 as Exhibit 31. And this is a -- an e-mail exchange</p> <p>24 between you and a gentleman by the name of Eduardo</p> <p>25 Anaya. Correct?</p>	<p style="text-align: right;">406</p> <p>1 A. That's right.</p> <p>2 Q. Okay. And what is it that you were saying to</p> <p>3 Mr. Anaya at that time?</p> <p>4 A. That I didn't know the port that the material</p> <p>5 was going to load out of.</p> <p>6 Q. Was this a comment on the origin of the</p> <p>7 material?</p> <p>8 A. Yeah. I -- what I said was most likely a port</p> <p>9 in the U.S. Gulf. That's correct.</p> <p>10 Q. Had Tricon provided to you any information</p> <p>11 about the port where this product would be loaded as of</p> <p>12 July 25th, 2008?</p> <p>13 A. No, I don't believe so.</p> <p>14 Q. And when you responded to Mr. Anaya's</p> <p>15 question -- I just want to be clear on this. What --</p> <p>16 what question were you responding to?</p> <p>17 A. The question I was responding to was, "We need</p> <p>18 the port of origin of this product," and I didn't know.</p> <p>19 Q. What was your understanding as of July 25th</p> <p>20 about the origin of the product?</p> <p>21 A. My understanding of the origin, it was from</p> <p>22 the United States and that it could be picked up at any</p> <p>23 port at the choice of Tricon in the United States.</p> <p>24 Q. I don't want to -- I don't want to pry into</p> <p>25 your personal details, Dr. Wilson, but as I understand</p>
<p style="text-align: right;">405</p> <p>1 A. That's right.</p> <p>2 Q. And who is Mr. Anaya?</p> <p>3 A. I believe he was the gentleman responsible for</p> <p>4 entering the terms of the deal into the SAP system.</p> <p>5 Q. In the first e-mail down at the bottom of the</p> <p>6 page from Mr. Anaya to you at 4:03 p.m., he asked you --</p> <p>7 first of all, he tells you he's going to do the</p> <p>8 follow-up from the logistics point of view.</p> <p>9 And then he says, "To complete the order,</p> <p>10 we just need the port of origin of this product." Do</p> <p>11 you see that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. What was your understanding of what he was</p> <p>14 asking you?</p> <p>15 A. He needed the specific port where the material</p> <p>16 would load out of.</p> <p>17 Q. Do you know why?</p> <p>18 A. Because the SAP system requires it.</p> <p>19 Q. Okay. And when you say "specific port," you</p> <p>20 mean actually where the product would be picked up?</p> <p>21 A. That's right.</p> <p>22 Q. You responded the next day to Mr. Anaya's</p> <p>23 e-mail and said, "Re: Origin. We won't know until we</p> <p>24 declare discharge port. Most likely USG." Do you see</p> <p>25 that?</p>	<p style="text-align: right;">407</p> <p>1 it in the summer of 2008, in addition to your work</p> <p>2 responsibilities, you were also dealing with some family</p> <p>3 medical issues. Is that correct?</p> <p>4 A. Several family issues, yes.</p> <p>5 Q. Do you recall during this period of time</p> <p>6 between the 22nd of July and the end of July that you</p> <p>7 were, in fact, dealing with some of those medical --</p> <p>8 A. Yes, I was actually.</p> <p>9 Q. Okay.</p> <p>10 A. I may have actually let one of the secretaries</p> <p>11 know that I wasn't very available.</p> <p>12 Q. And how did that impact your day-to-day work</p> <p>13 routine?</p> <p>14 A. I think I unfortunately became completely</p> <p>15 unplugged from the day-to-day operations of my -- of my</p> <p>16 job.</p> <p>17 Q. And that was during this period of time in</p> <p>18 late July?</p> <p>19 A. That's right.</p> <p>20 Q. If you look at the e-mail from Vuk Rajevac to</p> <p>21 Laurentiu down at the bottom of the third page, in</p> <p>22 Item 3, Paragraph No. 3 there, Mr. Rajevac makes the</p> <p>23 comment, "As far as the shipment details, we sold on a</p> <p>24 CFR basis with arrival windows. So once you declare the</p> <p>25 discharge port by August 8th, we will be able to decide</p>

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<p style="text-align: right;">408</p> <p>1 whether to give you a deep sea cargo, which at that 2 point will mostly already be on the water, or on Asian 3 origin cargo." Do you see that? 4 A. Yes. 5 Q. What does that mean to you, that Tricon might 6 provide a deep sea or Asian origin cargo? 7 A. That they were not going to necessarily 8 deliver the U.S. origin material that I required in 9 order to execute the sale that I was able to sell. 10 Q. And receiving this e-mail from Mr. Pascu, is 11 that when you first learned that Tricon was claiming 12 that it required -- that it was not required to sell 13 Vinmar U.S. origin MX? 14 A. I don't remember the exact moment of my 15 discovery, no. 16 Q. Was it around July 31st? 17 A. I believe it was in this timeframe, yeah. 18 Q. What did you mean when you said, "We cannot 19 accept open origin for this material. It must be from 20 the USA"? 21 A. I meant that the material had to originate in 22 the United States -- 23 Q. And -- 24 A. -- for us to accept the deal. That's my 25 understanding of the deal.</p>	<p style="text-align: right;">410</p> <p>1 losing side of a trade, but I thought I was very clear 2 what the terms were and that I recognized that while I 3 would suffer the consequence in terms of my compensation 4 and my relationship with the owners of Vinmar, I decided 5 that I was better off in the long run sticking to what I 6 originally thought were the terms of this agreement, 7 taking a loss, in the interest of preserving my 8 relationship and my reputation. 9 Q. Did Tricon ever accept the terms that you put 10 forward -- 11 A. No. 12 Q. -- on Exhibit 9? 13 A. I don't believe they did. 14 Q. And do you agree that there was no origin 15 guarantee on the MX? 16 A. No. 17 Q. Now, there are two alternatives that are 18 presented in this e-mail by Mr. Lockwood to you. The 19 first one is U.S. origin at 843 spec. Is that a 20 different spec than 5211? 21 A. It is a different spec, yes. 22 Q. Okay. And then there is the second 23 alternative, which is U.S. origin, but it wouldn't 24 arrive until October 15th, 2008. Were either one of 25 these alternatives acceptable to you?</p>
<p style="text-align: right;">409</p> <p>1 Q. Why did you go back to Mr. Leyman on the 31st 2 and tell him that there was an issue with Tricon? 3 A. I don't remember my thinking at the time. I 4 can only infer what I would do if I had to do it today, 5 which would be to go bring the issue up to the broker 6 who made the mistake. 7 Q. Okay. Do you remember that in the days 8 following July 22nd, 2008, that the price for MX fell 9 fairly considerably? 10 A. I do remember that. It was actually a big 11 surprise to me. 12 Q. Why was that? 13 A. Because the U.S. was tight. 14 Q. Let me I guess ask from the -- in the first 15 perspective, were the terms that you mentioned in this 16 e-mail to Mr. Leyman the terms that you had originally 17 expressed to him on July 22nd, 2008? 18 A. That's right. 19 Q. Why is it that Vinmar was still willing to buy 20 U.S. origin MX at 1310 a metric ton on August the 6th, 21 2008? 22 A. Well, I don't know that it was Vinmar. It was 23 Rick Wilson. 24 Q. Okay. 25 A. And the way I saw this was I knew I was on the</p>	<p style="text-align: right;">411</p> <p>1 A. No. 2 Q. Why not? 3 A. Because the only -- the only sales I knew I 4 could actually make were in September. And, number one, 5 in terms of the timing of the second -- the 843, also, I 6 didn't -- I wasn't aware of any customers willing to 7 accept that specification. I believe it's a lesser 8 specification, less stringent quality. 9 Q. Is Exhibit 10 in response to Mr. Lockwood's 10 e-mail which was Exhibit 18? 11 A. I don't remember specifically the e-mail, but 12 the -- but it would appear that's the case, yes. 13 Q. Let me show you Exhibit 11 and ask if that is 14 an e-mail that you sent to Mr. Leyman on August the 8th, 15 2008. 16 A. I don't remember sending e-mails from two 17 years ago, but it would appear that this was an e-mail 18 from me. 19 Q. Do you believe -- 20 A. Certainly this is in the spirit of my 21 understanding of what would have happened in the course 22 of this trade. Yes. As soon as there was an issue, you 23 will let all parties know. You would have been clear 24 about your rejection to the offer. 25 Q. Okay. Is it your understanding that Tricon</p>

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<p style="text-align: right;">412</p> <p>1 never agreed to meet Vinmar's terms for this post sale?</p> <p>2 A. That's my understanding. Tricon never agreed</p> <p>3 to the terms that I thought were in place.</p> <p>4 Q. After you left Vinmar's employment, did you</p> <p>5 receive a call from Brad Lockwood at Tricon?</p> <p>6 A. I did.</p> <p>7 Q. What did Mr. Lockwood say to you?</p> <p>8 A. He called me and questioned whether there was</p> <p>9 an issue about this trade. And he asked me about the</p> <p>10 nature of my employment with Vinmar. He asserted that</p> <p>11 it's a very difficult place to work. He said that it</p> <p>12 would be very beneficial for him if he could -- if I</p> <p>13 could side on the side of Tricon, it would be my</p> <p>14 opportunity to get back at Vinmar.</p> <p>15 Q. Why would it be beneficial to him; did he tell</p> <p>16 you?</p> <p>17 A. He said because his bonus is based on it and</p> <p>18 he has a family to support.</p> <p>19 Q. And what did you say to Mr. Lockwood?</p> <p>20 A. I think my response to him was that I</p> <p>21 agreed -- I agreed that the reality is Vinmar is a very</p> <p>22 difficult place to work, but I actually thought it was a</p> <p>23 go ahead experience for me, from a professional</p> <p>24 perspective, and I couldn't help him.</p> <p>25 Q. Did you explain to Mr. Lockwood in that</p>	<p style="text-align: right;">414</p> <p>1 A. Yes.</p> <p>2 Q. Okay. When did you meet Mr. Lee?</p> <p>3 A. Yesterday.</p> <p>4 Q. Okay. And about what time yesterday?</p> <p>5 A. 1:00 p.m.</p> <p>6 Q. Okay. Did you and he talk about what was</p> <p>7 going to happen during the deposition?</p> <p>8 A. What we did was we went through the documents</p> <p>9 and he familiarized me with them.</p> <p>10 Q. Okay. And how long did that meeting last?</p> <p>11 A. Till roughly 3:30, 4:00 o'clock.</p> <p>12 Q. Okay. So two and a half to three hours?</p> <p>13 A. That's right.</p> <p>14 Q. Okay. Mr. Lee sometime in the past asked you</p> <p>15 to sign an affidavit in this case, did he not?</p> <p>16 A. He did.</p> <p>17 Q. And you did not sign the affidavit?</p> <p>18 A. That's correct.</p> <p>19 Q. Why did you not sign the affidavit?</p> <p>20 A. My wife reminded me that she didn't think that</p> <p>21 Vinmar could be trusted and that I shouldn't sign any</p> <p>22 document that they presented me without first seeking</p> <p>23 legal counsel and that we didn't want to spend the money</p> <p>24 on legal counsel so we ignored it.</p> <p>25 Q. Okay. Mr. Wilson, when you -- Dr. Wilson,</p>
<p style="text-align: right;">413</p> <p>1 conversation that it was your view that the deal</p> <p>2 required U.S. origin MX?</p> <p>3 A. I believe so, yes.</p> <p>4 EXAMINATION</p> <p>5 BY MR. DIAZ-ARRASTIA:</p> <p>6 Q. My name is a George Diaz-Arrastia. I am the</p> <p>7 Laurentiu that represents Tricon in this matter. Have</p> <p>8 you and I ever met before?</p> <p>9 A. I don't believe so, no.</p> <p>10 Q. Have we ever spoken on the telephone?</p> <p>11 A. No.</p> <p>12 Q. Okay. Have you ever spoken on the telephone</p> <p>13 with anybody from my office?</p> <p>14 A. Yes.</p> <p>15 Q. Do you remember who you spoke with on the</p> <p>16 telephone?</p> <p>17 A. It was a woman.</p> <p>18 Q. Do you remember what you-all talked about?</p> <p>19 A. She called me and threatened to subpoena me at</p> <p>20 her convenience. Yes.</p> <p>21 Q. Okay. Was there any discussion about the</p> <p>22 facts of this case?</p> <p>23 A. I believe I told her that I did not believe</p> <p>24 there was a deal to purchase non-U.S. origin MX.</p> <p>25 Q. Did you meet Mr. Lee before this morning?</p>	<p style="text-align: right;">415</p> <p>1 when you bought MX from Tricon in this transaction</p> <p>2 that's the subject of this matter, was there a specific</p> <p>3 buyer that you were going to sell that MX to?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And what was that buyer?</p> <p>6 A. Formosa.</p> <p>7 Q. Okay. And Formosa is the name of a company?</p> <p>8 A. That's right.</p> <p>9 Q. Okay. And what's the full name of that</p> <p>10 company?</p> <p>11 A. I don't remember.</p> <p>12 Q. Okay. Dr. Wilson, if you would take a look at</p> <p>13 Exhibit No. 40. If you would look at the second page of</p> <p>14 Exhibit 40, sir.</p> <p>15 A. Okay.</p> <p>16 Q. And it is an e-mail between you and Jason</p> <p>17 Luoh?</p> <p>18 A. That's right.</p> <p>19 Q. You have to say -- he is the -- Vinmar's agent</p> <p>20 in Asia?</p> <p>21 A. That's right.</p> <p>22 Q. Okay. And is the firm offer for 1325 CFR</p> <p>23 Taiwan or Korea, is that referring to the sale that you</p> <p>24 had in mind when you bought the Tricon MX?</p> <p>25 A. Well, apparently I never bought this, but that</p>

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<p style="text-align: right;">416</p> <p>1 was the sale I was trying to make, yes.</p> <p>2 Q. Okay. And if you will look at the -- and</p> <p>3 given the price was 1325 and you were paying 1310 to</p> <p>4 Tricon if this sale had been made, you would have turned</p> <p>5 a profit on the deal?</p> <p>6 A. That's right.</p> <p>7 Q. Okay. And if you will look at the first page</p> <p>8 of Exhibit 40.</p> <p>9 A. Uh-huh.</p> <p>10 Q. And at the bottom of the page, Mr. Luoh is</p> <p>11 telling you, "We can't join -- blank -- tender." It was</p> <p>12 redacted. "We didn't present our firm offer in time."</p> <p>13 So you lost that sale?</p> <p>14 A. Yes.</p> <p>15 Q. That is because you didn't get your firm offer</p> <p>16 in on time?</p> <p>17 A. That's right. Jason was not able to get into</p> <p>18 the offices of Formosa in time, that's correct.</p> <p>19 Q. Was this an -- if you'll look at the very top</p> <p>20 of Exhibit 40, sir, Mr. Luoh is again telling you in</p> <p>21 this case what the winning bid was. Correct?</p> <p>22 A. That's correct.</p> <p>23 Q. It was 1305?</p> <p>24 A. That's correct.</p> <p>25 Q. And that is less than the price that Tricon</p>	<p style="text-align: right;">418</p> <p>1 mutual broker. Didn't you say that, sir?</p> <p>2 A. I'd say he was a broker doing a deal between</p> <p>3 two counterparties.</p> <p>4 Q. Okay. And the counterparties did not speak to</p> <p>5 each other; they communicated only through the broker.</p> <p>6 Correct, sir?</p> <p>7 A. That was the nature of the relationship, yes.</p> <p>8 Q. And that meant that Mr. Leyman represented</p> <p>9 both sides to the transaction. Is that your</p> <p>10 understanding?</p> <p>11 A. That's my understanding.</p> <p>12 Q. If you can look at Exhibit No. 2, Mr. Wilson,</p> <p>13 do you remember getting this document on July 22nd from</p> <p>14 MOAB Oil?</p> <p>15 A. I remember seeing it before. I don't remember</p> <p>16 specifically getting it on that date.</p> <p>17 Q. Okay. Ed Leyman worked for MOAB Oil.</p> <p>18 Correct?</p> <p>19 A. That's right.</p> <p>20 Q. Now, the purpose of Exhibit No. 2 is to</p> <p>21 confirm the transaction that Mr. Leyman had brokered</p> <p>22 between Tricon and Vinmar. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you saw Exhibit No. 2. Correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">417</p> <p>1 was going to sell you?</p> <p>2 A. That's right.</p> <p>3 Q. And you learned that you were not going to</p> <p>4 make the 13.5 sale to Formosa on July 23rd at about</p> <p>5 11:48 a.m. Is that correct?</p> <p>6 A. Yep.</p> <p>7 Q. That's -- sir, did you already have your job</p> <p>8 offer from Cobalt Technologies when you left Vinmar?</p> <p>9 A. No.</p> <p>10 Q. When did you get the job offer from Cobalt?</p> <p>11 A. It was very close to the time that I started.</p> <p>12 Q. And when did you start?</p> <p>13 A. The very end of October.</p> <p>14 Q. And you left Vinmar October the 3rd?</p> <p>15 A. I believe that was the date, yes.</p> <p>16 Q. Did you spend maybe about three weeks where</p> <p>17 you didn't have a job lined up?</p> <p>18 A. That's right.</p> <p>19 Q. You had done deals using Ed Leyman as a broker</p> <p>20 prior to the deal that's the subject matter of this</p> <p>21 case. Correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. About how many?</p> <p>24 A. Small number. Less than five.</p> <p>25 Q. Okay. Well, I think you did say that he was a</p>	<p style="text-align: right;">419</p> <p>1 Q. Did you see it on July 22nd?</p> <p>2 A. I do not remember the exact date that I saw</p> <p>3 it.</p> <p>4 Q. Okay. Did you find Mr. Leyman to be a</p> <p>5 competent broker, sir, when you used him?</p> <p>6 A. Yes.</p> <p>7 Q. If you would take a look at the second page of</p> <p>8 Exhibit No. 2, sir, near the -- near the bottom, right</p> <p>9 above where it says Page 1 of 2 on the right hand --</p> <p>10 lower right-hand corner.</p> <p>11 It says, "If there is anything outlined</p> <p>12 contrary to your understanding of our agreement, please</p> <p>13 notify us immediately."</p> <p>14 A. I see that, yes.</p> <p>15 Q. Did you see that back on July 22nd?</p> <p>16 A. This is -- I don't remember seeing it.</p> <p>17 Q. Had you seen that in the prior confirms that</p> <p>18 Mr. Leyman had sent you in other deals?</p> <p>19 A. I don't remember seeing it, no.</p> <p>20 Q. Now, Mr. Leyman, after receiving this initial</p> <p>21 confirm, you requested a change on the payment terms for</p> <p>22 this transaction. Do you recall that, sir?</p> <p>23 A. Yes.</p> <p>24 Q. The payment terms on Exhibit 2 refer to</p> <p>25 30 days. Correct, sir?</p>

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<p style="text-align: right;">420</p> <p>1 A. That's what's represented. That's correct.</p> <p>2 Q. And you had -- you had requested to change</p> <p>3 that to an on site letter of credit. Do you remember</p> <p>4 that?</p> <p>5 A. I believe originally I was seeking 45-day</p> <p>6 terms. And then once there was a CFR deal, there --</p> <p>7 there was some changes. I don't remember the details.</p> <p>8 Q. Okay. And was it an on site letter of credit?</p> <p>9 A. I believe one of the documents you provided me</p> <p>10 indicated that it was. That was a request, but I don't</p> <p>11 remember making that request.</p> <p>12 Q. Okay. Let me show you what's been previously</p> <p>13 marked as Exhibit No. 6. And these appear to be instant</p> <p>14 messages between yourself and Ed Leyman --</p> <p>15 A. That's correct.</p> <p>16 Q. -- on July 22, 2008?</p> <p>17 A. That's right.</p> <p>18 Q. Okay. And if you look towards the bottom of</p> <p>19 the page at 4:09:37 p.m. Do you see that, sir?</p> <p>20 A. That's right.</p> <p>21 Q. Where it says Rick -- I guess that's you --</p> <p>22 asking Mr. Leyman, "Did you get the LC site terms?"</p> <p>23 A. That's correct.</p> <p>24 Q. And then Mr. Leyman says, "Not yet. We'll</p> <p>25 recheck." And then at 4:18:07 he says that "Tricon okay</p>	<p style="text-align: right;">422</p> <p>1 A. I do remember that, yes.</p> <p>2 Q. Okay. Had you noticed that mistake in the</p> <p>3 price term -- in the price term?</p> <p>4 A. At some point -- at some point in the -- at</p> <p>5 some point in this I did recognize there was an error in</p> <p>6 the price, yes.</p> <p>7 Q. Okay. And did you notify Mr. Leyman about it?</p> <p>8 A. I don't remember that.</p> <p>9 Q. I'll show you now what has previously been</p> <p>10 marked as Exhibit 4. If you'll look in the second page</p> <p>11 of Exhibit 4, the price term has been changed from 1110</p> <p>12 per metric ton to 1310 per metric ton. Is that right,</p> <p>13 sir?</p> <p>14 A. Yes.</p> <p>15 Q. And 1310 was the correct price. Isn't that</p> <p>16 so? That was agreed to?</p> <p>17 A. I believe so.</p> <p>18 Q. And, again, on Exhibit 4, near the bottom in</p> <p>19 the same place where we saw it in the other two</p> <p>20 exhibits, it also contains the statement, "If there is</p> <p>21 anything outlined contrary to your understanding of our</p> <p>22 agreement, please notify us immediately by facsimile."</p> <p>23 A. That's right.</p> <p>24 Q. Nowhere in Exhibits 2, 3 or 4 is there a term</p> <p>25 that says "U.S. origin must be guaranteed for this MX."</p>
<p style="text-align: right;">421</p> <p>1 with LC site. Will send out amendment." Did I read</p> <p>2 that correctly, sir?</p> <p>3 A. That's right.</p> <p>4 Q. I'll show you what has been previously marked</p> <p>5 as Exhibit 3, two of these. And that is another MOAB</p> <p>6 confirm. Correct?</p> <p>7 A. That's correct.</p> <p>8 Q. It's also dated July 22, 2008?</p> <p>9 A. That's correct.</p> <p>10 Q. And if you will take a look at the second</p> <p>11 page, the payment terms have been changed to payment</p> <p>12 outside by document or letter of credit?</p> <p>13 A. That's correct.</p> <p>14 Q. Did you receive Exhibit No. 3, sir?</p> <p>15 A. I don't remember receiving it, but the e-mail</p> <p>16 evidence would suggest that's the case.</p> <p>17 Q. Now, if we look at the same place near the</p> <p>18 bottom of the second page of Exhibit 3, it also contains</p> <p>19 the statement, "If there is anything outlined contrary</p> <p>20 to your understanding of our agreement, please notify us</p> <p>21 immediately by facsimile."</p> <p>22 A. I see that. Yes.</p> <p>23 Q. And, Mr. Wilson, do you recall that there was</p> <p>24 also an issue about a mistake made on the price term in</p> <p>25 these first two confirms?</p>	<p style="text-align: right;">423</p> <p>1 Isn't that right?</p> <p>2 A. The -- all these confirms are silent on the</p> <p>3 issue of origin.</p> <p>4 Q. They don't say anything about it?</p> <p>5 A. They don't say anything.</p> <p>6 Q. Okay. Did you ever call Mr. Leyman to</p> <p>7 say, "Hey, this doesn't say that it has to be U.S.</p> <p>8 origin"?</p> <p>9 A. At some point I did call Mr. Leyman and tell</p> <p>10 him that.</p> <p>11 Q. Okay. But you did not do it on July 22nd?</p> <p>12 MR. BERGESON: Objection.</p> <p>13 Q. (BY MR. DIAZ-ARRASTIA) You didn't do that on</p> <p>14 July 22nd, did you, sir?</p> <p>15 A. No.</p> <p>16 Q. And you didn't do it on July 23rd?</p> <p>17 A. No.</p> <p>18 Q. You didn't do it until July 31st. Right, sir?</p> <p>19 A. This was a delay. That's right.</p> <p>20 Q. And on July 22nd, you told Mr. Leyman you</p> <p>21 wanted the payment terms changed?</p> <p>22 A. That's right.</p> <p>23 Q. You did do that. Correct, sir?</p> <p>24 A. That's right.</p> <p>25 Q. And there was also a change in the price term,</p>

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<p style="text-align: right;">424</p> <p>1 an amendment. Correct, sir?</p> <p>2 A. That's correct.</p> <p>3 Q. During all these iterations of Exhibits 2, 3</p> <p>4 and 4, you never said, "Hey, U.S. origin is not part of</p> <p>5 the terms of this deal that's written out"?</p> <p>6 A. I never objected to a term that wasn't</p> <p>7 included on these confirms. It was -- in retrospect, I</p> <p>8 should have, but it was MOAB's mistake, not mine.</p> <p>9 Q. Is it your belief that on July 22nd, 2008, you</p> <p>10 did buy MX from Tricon, you meaning in your capacity as</p> <p>11 the representative of Vinmar?</p> <p>12 I'm just asking --</p> <p>13 MR. BERGESON: I understand.</p> <p>14 Q. (BY MR. DIAZ-ARRASTIA) -- what your</p> <p>15 understanding is.</p> <p>16 A. I do not believe there was ever a deal with</p> <p>17 Tricon. We never agreed on the terms. I required U.S.</p> <p>18 origin. Tricon didn't want U.S. origin. There was</p> <p>19 never an agreement.</p> <p>20 Q. If you could take a look at Exhibit 39 from</p> <p>21 this stack, sir. And you talked about this with Mr. Lee</p> <p>22 about the middle of the page your writing to</p> <p>23 Mr. Nicholas Smith, you say, "I bought CFR so I don't</p> <p>24 need to arrange shipping."</p> <p>25 A. That's right.</p>	<p style="text-align: right;">426</p> <p>1 that you received from Mr. Lockwood that's dated</p> <p>2 July 22nd. Correct, sir?</p> <p>3 A. I don't remember if this was attached.</p> <p>4 Q. Do you remember receiving the letter from</p> <p>5 Mr. Lockwood?</p> <p>6 A. I don't remember, no.</p> <p>7 Q. I think Mr. Pascu's job at Vinmar was a supply</p> <p>8 chain specialist. Is that correct?</p> <p>9 A. It's one way you could describe his work, yes.</p> <p>10 Q. What is the job of a supply chain specialist?</p> <p>11 A. He is -- his role is to make sure that the</p> <p>12 terms of the agreement -- that the terms of the</p> <p>13 agreement are consistent with what we've agreed to.</p> <p>14 Q. Okay. Once a trader makes a deal, is it the</p> <p>15 job of the supply chain specialist to complete the</p> <p>16 transaction?</p> <p>17 A. Yes.</p> <p>18 Q. And this frees the trader to do more deals.</p> <p>19 Correct?</p> <p>20 A. That's right.</p> <p>21 Q. Okay. The trader's job is to make deals and</p> <p>22 the supply chain specialist, or whatever you want to</p> <p>23 call that person, their job is to complete the</p> <p>24 transaction. Is that correct, sir?</p> <p>25 A. Well, that's a -- there's many elements of</p>
<p style="text-align: right;">425</p> <p>1 Q. When you say you bought CFR, you're referring</p> <p>2 to the Tricon transaction. Correct?</p> <p>3 A. That's right.</p> <p>4 Q. So you're telling Mr. Smith that you bought MX</p> <p>5 from Tricon. Correct, sir?</p> <p>6 A. That's what I told them, yes.</p> <p>7 Q. I'm going to show you now what's been</p> <p>8 previously marked as Exhibit 29. Do you recognize that</p> <p>9 document, sir?</p> <p>10 A. No.</p> <p>11 Q. Okay. Well, it appears to be an e-mail that</p> <p>12 you're sending to Laurentiu Pascu.</p> <p>13 A. That's right.</p> <p>14 Q. And you've already talked about Mr. Pascu. He</p> <p>15 worked with you at Vinmar. Correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. And it is dated on July 24th, 2008, at</p> <p>18 10:15. Correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And you tell Mr. Pascu, "Laurentiu, I bought</p> <p>21 MX from Tricon. Please make -- please contact them and</p> <p>22 make the necessary arrangements. Rick." Did I read</p> <p>23 that correctly, sir?</p> <p>24 A. That's correct.</p> <p>25 Q. And you're attaching to Mr. Pascu a letter</p>	<p style="text-align: right;">427</p> <p>1 completing a transaction. Clearly they're not engaged</p> <p>2 in shipping or chartering but all the financial and</p> <p>3 contractual agreements, you know, it's their</p> <p>4 responsibility to execute them.</p> <p>5 Q. They complete the financial and contractual</p> <p>6 agreements?</p> <p>7 A. That's right. Where they enter them into the</p> <p>8 system, right.</p> <p>9 Q. Let me now show you what's been previously</p> <p>10 marked as Exhibit 15, and if I could call your attention</p> <p>11 to the bottom of the page. It's an e-mail from Brad</p> <p>12 Lockwood to you dated July 23, 2008, at 10:57 in the</p> <p>13 morning.</p> <p>14 A. Uh-huh.</p> <p>15 Q. And Mr. Brad Lockwood says, "Rick, I am</p> <p>16 pleased to attach a copy of our sales contract to you</p> <p>17 for the mixed xylenes."</p> <p>18 A. That's right.</p> <p>19 Q. And if you would look at the second page of</p> <p>20 Exhibit No. 15, it appears to be the same letter that</p> <p>21 was in Exhibit 29. Is that correct?</p> <p>22 A. I'm not sure. Okay. They appear to be the</p> <p>23 same.</p> <p>24 Q. Does this refresh your recollection about</p> <p>25 receiving Mr. Lockwood's July 22, 2008, letter?</p>

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<p style="text-align: right;">428</p> <p>1 A. I remember seeing this contract before.</p> <p>2 Q. Does this refresh your recollection that</p> <p>3 Mr. Lockwood sent it to you on July 23rd, 2008?</p> <p>4 A. That's the time stamp on this, that's correct.</p> <p>5 Q. And Exhibit 29 indicates that you forwarded it</p> <p>6 to Mr. Pascu on July 24th at 10:15 a.m.?</p> <p>7 A. Again, I don't remember forwarding it, but I</p> <p>8 believe its accurate.</p> <p>9 Q. Sir, if you would, take a look at Exhibit 15,</p> <p>10 which is the last one that we were talking about.</p> <p>11 A. Okay.</p> <p>12 Q. And the second page, I think it's the one you</p> <p>13 have in front of you.</p> <p>14 A. Yeah.</p> <p>15 Q. And if you would then pull out Exhibit 4 and</p> <p>16 look at the second page of that.</p> <p>17 A. Okay.</p> <p>18 Q. And I would like to compare the two on some of</p> <p>19 the essential terms of the deal. First, you see where</p> <p>20 it says "Product" on Exhibit 15?</p> <p>21 A. Yep.</p> <p>22 Q. And it says "Mixed xylenes." Correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And it says -- and that is the same as what it</p> <p>25 says on Exhibit 4. Correct?</p>	<p style="text-align: right;">430</p> <p>1 Q. It's the same?</p> <p>2 A. Yes.</p> <p>3 Q. On delivery in Exhibit 15, there is a line</p> <p>4 that says "Incoterm." That says, "CFR Ulsan/Taiwan."</p> <p>5 You understand that to be referring to the delivery.</p> <p>6 Correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And the delivery on Exhibit 4 says, "CFR basis</p> <p>9 Taiwan or Ulsan Korea." Correct, sir?</p> <p>10 A. That's right.</p> <p>11 Q. In -- in Exhibit 15 there's a line that says,</p> <p>12 "Ship period, September 1, 2008, to September 15, 2008,"</p> <p>13 correct, sir, on Exhibit 15?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And if you look under the delivery</p> <p>16 terms in Exhibit 4, second line -- starting from the end</p> <p>17 of the first line, second line, it says, "At buyer's</p> <p>18 option via barge/vessel provided seller 9-1-2008 to</p> <p>19 9-15-2008, seller's option." Correct?</p> <p>20 A. That's correct.</p> <p>21 Q. They're the same again?</p> <p>22 A. Uh-huh.</p> <p>23 Q. So all of these terms that we have talked --</p> <p>24 and -- excuse me.</p> <p>25 Finally, if you'll look at the payment</p>
<p style="text-align: right;">429</p> <p>1 A. That's correct.</p> <p>2 Q. Let's look where it says "Quantity" on</p> <p>3 Exhibit 15. And it says, "5,000 metric tons plus or</p> <p>4 minus 5 percent." Correct, sir?</p> <p>5 A. That's right.</p> <p>6 Q. And quantity on Exhibit 4 also says, "5,000</p> <p>7 metric tons plus or minus 5 percent." So they're the</p> <p>8 same?</p> <p>9 A. Yes.</p> <p>10 Q. Let's go to the next. Quality is the next one</p> <p>11 on Exhibit 15. And it says, "ASTM D-5211 with BL max</p> <p>12 20." Correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And over on Exhibit 4, you have to skip a</p> <p>15 line. There's also a quality line and it says, "Mixed</p> <p>16 xylenes meeting ASTM D-5211, latest revisions with 52</p> <p>17 maximum bromide index," which is the same thing.</p> <p>18 Correct?</p> <p>19 A. That's right.</p> <p>20 Q. Price on Exhibit 15, it says, "USD 1310.00 per</p> <p>21 metric ton." Correct, sir?</p> <p>22 A. That's right.</p> <p>23 Q. And on Exhibit 4 price, that's the same,</p> <p>24 "USD 1310 per metric ton, CFR basis." Correct, sir?</p> <p>25 A. I don't see CFR basis. Oh, yeah, I do. Yes.</p>	<p style="text-align: right;">431</p> <p>1 term and credit terms, they both talk about a payment by</p> <p>2 an on site letter of credit. Correct, sir?</p> <p>3 A. That's correct.</p> <p>4 Q. So those -- all of these terms that we have</p> <p>5 discussed are the same in Exhibit 15 and in Exhibit 4?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. And Exhibit 15, Mr. Lockwood's letter,</p> <p>8 again, does not say anything about the origin of the</p> <p>9 material?</p> <p>10 A. It does not.</p> <p>11 Q. Although Exhibit 15 contains terms that are</p> <p>12 not included in Exhibit 4, it doesn't contain any terms</p> <p>13 that are different from the ones on Exhibit 4. Is that</p> <p>14 correct, sir?</p> <p>15 Is that right?</p> <p>16 A. There is nothing on the confirm that is not</p> <p>17 included in the contract, that's correct.</p> <p>18 Q. And Exhibit 15 has more terms than the</p> <p>19 confirm?</p> <p>20 A. That's right.</p> <p>21 Q. But nothing in the -- Exhibit 15 contradicts</p> <p>22 something that's in the confirm. Isn't that right, sir?</p> <p>23 A. Say that again.</p> <p>24 Q. Nothing that -- nothing that is in Exhibit 15</p> <p>25 contradicts a term that's stated on Exhibit 4?</p>

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<p style="text-align: right;">432</p> <p>1 A. No, except that there's additional terms.</p> <p>2 Q. Okay. If you would take a look at Exhibit 31,</p> <p>3 sir. We looked at that earlier.</p> <p>4 (Playback of videotaped was stopped at</p> <p>5 this time.)</p> <p>6 MR. LEE: Stop there.</p> <p>7 JUDGE BENTON: Why don't you stop? Let's</p> <p>8 go ahead and stop it and we'll go to lunch.</p> <p>9 MR. DIAZ-ARRASTIA: I think this is a good</p> <p>10 place to break.</p> <p>11 JUDGE BENTON: We'll break for lunch until</p> <p>12 about 1:00 o'clock. We're at lunch. We're off the</p> <p>13 record.</p> <p>14 (Recess from 11:56 a.m. to 1:03 p.m.)</p> <p>15 JUDGE BENTON: We're back on the record.</p> <p>16 And we'll -- let's see. We have about an hour -- about</p> <p>17 45 minutes left. Right?</p> <p>18 MR. RUNIONS: That's what I've got, about</p> <p>19 45 minutes.</p> <p>20 Let's pick up with the deposition</p> <p>21 testimony.</p> <p>22 (Playback of videotape was started again</p> <p>23 at this time.)</p> <p>24 Q. (BY MR. DIAZ-ARRASTIA) If you would take a</p> <p>25 look at Exhibit 31, sir. We looked at that earlier.</p>	<p style="text-align: right;">434</p> <p>1 order. Correct, sir?</p> <p>2 A. That's right.</p> <p>3 Q. And then you respond to him a few minutes</p> <p>4 later saying, "There is also a .5 per -- I guess that's</p> <p>5 MT -- broker charge." Right, sir?</p> <p>6 A. That's correct.</p> <p>7 Q. And you say, "And I may not sell it in</p> <p>8 Taiwan"?</p> <p>9 A. That's right.</p> <p>10 Q. And that's because you already knew at the</p> <p>11 sale that you had in your mind you had lost. Correct,</p> <p>12 sir?</p> <p>13 A. That's right.</p> <p>14 Q. And then you say in your last line,</p> <p>15 "Otherwise, it's fine." Do you see that, sir?</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. And -- well, what I'm trying to</p> <p>18 understand, sir, is when you say, "Otherwise, it's</p> <p>19 fine," are you saying that the purchase order that</p> <p>20 Mr. Anaya prepared is fine other than the --</p> <p>21 A. I don't remember the details of what I was</p> <p>22 thinking at the time. I'm sorry.</p> <p>23 Q. Before you wrote the e-mail at the top of</p> <p>24 Exhibit 31, had you seen the purchase order that</p> <p>25 Mr. Anaya had prepared?</p>
<p style="text-align: right;">433</p> <p>1 It's your e-mail chain with Mr. Anaya.</p> <p>2 A. 31 did you say?</p> <p>3 Q. 31, yes, sir.</p> <p>4 A. All right.</p> <p>5 Q. And on July 24th, Mr. Anaya tells you, "To</p> <p>6 complete the order, we just need the port of origin for</p> <p>7 this product."</p> <p>8 Do you remember talking about that with</p> <p>9 Mr. Lee?</p> <p>10 A. That's right.</p> <p>11 Q. And your response was, "Re: Origin, we won't</p> <p>12 know until we declare discharge port. Most likely USG,"</p> <p>13 meaning U.S. Gulf?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And you understand that most likely</p> <p>16 doesn't mean a guarantee?</p> <p>17 A. I didn't need a guarantee from the U.S. Gulf.</p> <p>18 I needed a guarantee from the USA.</p> <p>19 Q. Sir, my question to you was, in your mind, if</p> <p>20 something says, "Something is most likely of a certain</p> <p>21 origin," that is different from saying, "It's guaranteed</p> <p>22 to be of that origin." Would you agree me about that?</p> <p>23 A. That's correct.</p> <p>24 Q. And Mr. Anaya responds to you saying, "Okay.</p> <p>25 That is what we wrote on the PO," meaning purchase</p>	<p style="text-align: right;">435</p> <p>1 A. I don't remember seeing it.</p> <p>2 Q. Okay. Mr. Wilson, I am showing you what's</p> <p>3 been previously marked as Exhibit 34. Is that the</p> <p>4 purchase order that was prepared for the Tricon deal at</p> <p>5 Vinmar?</p> <p>6 A. I don't remember it, no.</p> <p>7 Q. You don't know if you had seen that before you</p> <p>8 replied to Mr. Anaya, "Otherwise, it's fine"?</p> <p>9 A. I just don't remember reviewing it. I'm</p> <p>10 sorry.</p> <p>11 Q. Is this the standard purchase order form that</p> <p>12 Vinmar used around July 24th, 2008?</p> <p>13 A. I can't comment on if every line here is</p> <p>14 consistent, which usually is.</p> <p>15 Q. I'm sorry. I didn't hear the last part of</p> <p>16 your answer.</p> <p>17 A. I'm sorry that you couldn't hear me. My point</p> <p>18 was that I can't comment and I can't say without doubt</p> <p>19 that every -- every term that is typically on a purchase</p> <p>20 order from Vinmar is on this specific example.</p> <p>21 Q. Okay. I understand. It was not your job as a</p> <p>22 trader to prepare purchase orders?</p> <p>23 A. That's right.</p> <p>24 Q. That was either Mr. Anaya or Mr. Pascu's job?</p> <p>25 A. That's right.</p>

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<p style="text-align: right;">436</p> <p>1 Q. They took care of that part of the 2 transaction? 3 A. That's right. 4 Q. If you would take a look at the second page of 5 Exhibit 34, sir. That's the one we were just looking at 6 right there. You see near the top where there's a place 7 for origin? 8 A. That's right. 9 Q. Okay. And it's left blank? 10 A. That's right. 11 Q. And if you'll look at the bottom of the second 12 page, do you see where it says, "Law and arbitration"? 13 A. Yes, I see that. 14 Q. Now, it says, "Law of the state of Texas, USA, 15 to apply. All disputes arising in connection with the 16 present contract shall be finally settled under the 17 rules of conciliation and arbitration of the American 18 Arbitration Association by one or more arbitrators 19 appointed in accordance with the said rules." Did I 20 read that correctly, sir? 21 A. You did read that correctly. 22 Q. Okay. Is that law and arbitration provision 23 one that was contained in the purchase orders that 24 Vinmar was using on or around July 2008? 25 A. I don't remember.</p>	<p style="text-align: right;">438</p> <p>1 A. I can't confirm that. May be. 2 Q. And at the bottom of the text of this e-mail, 3 Mr. Pascu says, "If you have a right contact person 4 would be great. I can make contacts and discuss that." 5 Do you see that, sir? 6 A. Yes, I see that. 7 Q. And, Mr. Wilson, Exhibit 36 was July 29th, 8 2008, at 11:54 a.m. Correct? 9 A. That's correct. 10 Q. And the document we have just marked 11 Exhibit 41 is an e-mail from you to Mr. Pascu on 12 July 29th, 2008, at 11:59 a.m., just a few minutes 13 later. Correct? 14 A. That's correct. 15 Q. And essentially you tell him, "Laurentiu, the 16 contact is Vuk Rajevac." 17 A. That's correct. 18 Q. And you gave him his e-mail address and 19 cellphone number. Correct, sir? 20 A. That's what's in the e-mail, yes. 21 Q. Okay. If you would take a look at Exhibit 15, 22 again, sir, the first page of that exhibit. In 23 Mr. Lockwood's e-mail to you at the bottom of that first 24 page, in the second sentence, he tells you, "Please let 25 Vuk know the contact details for your logistics</p>
<p style="text-align: right;">437</p> <p>1 Q. Again, that's because that's not your job, 2 it's Mr. Pascu's and Mr. Anaya's job? 3 A. I just don't remember. 4 Q. But dealing with that part of the transaction 5 was not your job as the trader; it was the job of 6 Mr. Anaya or Mr. Pascu as the specialists? 7 A. I don't remember the detailed roles and 8 responsibility. I'm sorry. 9 Q. Dr. Wilson, let me show you what was 10 previously marked as Exhibit 36. And this is an e-mail 11 from Mr. Pascu to you dated July 29th, 2008? 12 A. Yes, sir. I've read it. 13 Q. Well, that's what it is. It's an e-mail from 14 Mr. Pascu to you dated July 29th, 2008? 15 A. That's correct. 16 Q. And Mr. Pascu says, "Rick, please find my 17 comments on this sales contract." Do you understand 18 that to be a reference to Exhibit 15, the letter from 19 Mr. Lockwood to you? Let me repeat my question. 20 A. Yeah. Could you, please? 21 Q. My question was, is it your understanding, 22 sir, that when Mr. Pascu says, "Please find my comments 23 on this sales contract," Mr. Pascu is referring to 24 Exhibit 15, the letter from Mr. Lockwood to you with the 25 additional terms?</p>	<p style="text-align: right;">439</p> <p>1 colleague." Do you understand that Vuk means Vuk 2 Rajevac? 3 A. Do I understand now? Yes. I don't -- I'm not 4 sure I understand at that time. 5 Q. Well, how did you know to tell Mr. Pascu that 6 the contact person he needed to get ahold of us was Vuk 7 Rajevac? 8 A. I don't remember. 9 Q. All right. Mr. Lockwood had to have told you. 10 Right? 11 A. I don't remember. 12 Q. Let me bring your attention now, sir, to what 13 has been previously been marked as Exhibit 35. And if 14 you'll look at the bottom half of the first page of 15 Exhibit 35, it appears to be an e-mail from Mr. Pascu to 16 Mr. Rajevac dated July 29th, 2008, at 4:08 in the 17 afternoon. Is that correct, sir? 18 A. That's correct. 19 Q. Okay. And Mr. Pascu says, "Please enclose our 20 comments on your sale confirmation. We shall revert 21 soon with our purchase order for your review." Did I 22 read that correctly? 23 A. You did. 24 Q. Okay. And the purchase order that he's 25 referring to would be what we saw as Exhibit 34?</p>

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<p style="text-align: right;">440</p> <p>1 A. Maybe.</p> <p>2 Q. You don't get involved with purchase orders?</p> <p>3 A. No. I think that -- I don't remember the</p> <p>4 details of what happened over two years ago.</p> <p>5 Q. Okay. If you will look over on the third page</p> <p>6 of Exhibit 35, sir. And this appears to be a copy of</p> <p>7 Mr. Lockwood's letter like what we have on Exhibit 15</p> <p>8 except that there's some handwriting on it. Do you see</p> <p>9 that, sir?</p> <p>10 A. That's correct.</p> <p>11 Q. Is that Mr. Raj -- Mr. Pascu's handwriting?</p> <p>12 A. I don't know.</p> <p>13 Q. If you would look at the top right-hand</p> <p>14 corner, there's a number handwritten in there.</p> <p>15 A. That's correct.</p> <p>16 Q. Do you see that it's 4529980?</p> <p>17 A. That's correct.</p> <p>18 Q. If you will take a look at Exhibit 34, sir.</p> <p>19 That's the purchase order.</p> <p>20 A. Okay.</p> <p>21 Q. There's a purchase order number on Exhibit 34.</p> <p>22 Correct, sir?</p> <p>23 A. That's right.</p> <p>24 Q. And that's also 4529980. Correct, sir?</p> <p>25 A. 452 -- that's correct.</p>	<p style="text-align: right;">442</p> <p>1 that's right.</p> <p>2 Q. So "and confirmed" is scratched out?</p> <p>3 A. That's right.</p> <p>4 Q. Take a look at Exhibit 36 again, Mr. Pascu's</p> <p>5 e-mail to you. And if you will look -- I think it's the</p> <p>6 second sentence. He says, "Also, we do not have to open</p> <p>7 a confirmed LC." Do you see where he says that?</p> <p>8 A. Yes.</p> <p>9 Q. And that's making a reference to scratching</p> <p>10 out "and confirmed." Correct?</p> <p>11 A. It would appear to be the case.</p> <p>12 Q. Okay. And that's the sort of thing that</p> <p>13 Mr. Pascu would take care of; that's part of his job?</p> <p>14 A. Yes.</p> <p>15 Q. If you will look at the next page on</p> <p>16 Exhibit 35. It's VIN No. 6, 00006.</p> <p>17 A. 6. All right. Five, six. Yeah.</p> <p>18 Q. Okay. Do you see under Demurrage, Mr. Rajevac</p> <p>19 wants to change the demurrage time bar. Correct?</p> <p>20 A. Right.</p> <p>21 Q. Yes, sir?</p> <p>22 A. That's what it says.</p> <p>23 Q. And that's also part of what mister -- I said</p> <p>24 Mr. Rajevac. Mr. Pascu says that he wants to change the</p> <p>25 demurrage time bar. Correct?</p>
<p style="text-align: right;">441</p> <p>1 Q. Okay. So this handwritten number appears to</p> <p>2 be a reference to the Vinmar purchase order. Will you</p> <p>3 agree with that?</p> <p>4 A. It does.</p> <p>5 Q. I'm sorry. Did Mr. Pascu discuss with you his</p> <p>6 comments before he sent them to Mr. Rajevac?</p> <p>7 A. I don't remember.</p> <p>8 Q. Well, did you see this document with the</p> <p>9 handwritten notes --</p> <p>10 A. On what date?</p> <p>11 Q. -- before Mr. Pascu forwarded it to</p> <p>12 Mr. Rajevac?</p> <p>13 A. I don't remember.</p> <p>14 Q. Some of the changes that are made in</p> <p>15 handwriting on Exhibit 34 -- for example, where you see</p> <p>16 the credit terms, there is something scratched out. Do</p> <p>17 you see that, sir?</p> <p>18 A. That's right.</p> <p>19 Q. And what's scratched out I think is where he</p> <p>20 says, "Irrevocable and confirmed." He scratched out</p> <p>21 "and confirmed"?</p> <p>22 A. I can't even read this but --</p> <p>23 Q. Let's take a look at Exhibit 15, which is</p> <p>24 clearer, the second page of Exhibit 15.</p> <p>25 A. "Irrevocable and confirmed" document, I see</p>	<p style="text-align: right;">443</p> <p>1 A. That's apparently the case.</p> <p>2 Q. And that's also part of Mr. Pascu's job?</p> <p>3 A. That's correct.</p> <p>4 Q. Otherwise, would Mr. Pascu have the authority</p> <p>5 to go forward and complete the transaction as part of</p> <p>6 his job?</p> <p>7 A. He can't change the terms, no.</p> <p>8 Q. But he can negotiate things like not needing a</p> <p>9 confirmed letter of credit?</p> <p>10 A. He would have to propose it and -- you know, a</p> <p>11 demurrage letters of credit are commercial terms. He</p> <p>12 would normally bring those to my attention.</p> <p>13 Q. Okay. And do you think he did in this case?</p> <p>14 A. And I think he did or didn't?</p> <p>15 Q. Do you think he did in this case?</p> <p>16 A. I don't remember him doing, it, no.</p> <p>17 Q. In looking again at Exhibit 35, none of the</p> <p>18 handwritten notations on Mr. Lockwood's letter say</p> <p>19 anything about origin of the material. Correct?</p> <p>20 A. And which page is that? It's exhibit --</p> <p>21 Q. Exhibit 35.</p> <p>22 A. 35.</p> <p>23 Q. We have a part where we have handwritten</p> <p>24 notations on Mr. Lockwood's July 22nd letter.</p> <p>25 A. Okay.</p>

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<p style="text-align: right;">444</p> <p>1 Q. None of those handwritten notations relate to</p> <p>2 the origin of the material?</p> <p>3 A. No.</p> <p>4 Q. And, similarly, in the cover e-mail from</p> <p>5 Mr. Pascu to Mr. Rajevac, there's no mention of origin</p> <p>6 on the material either?</p> <p>7 A. That's correct. But as a point of</p> <p>8 clarification, this deal -- they would not have notified</p> <p>9 the port of origin because they wanted us to nominate a</p> <p>10 discharge port and time first so you wouldn't have that</p> <p>11 information on these contracts at this point.</p> <p>12 Q. Is it your testimony, sir, that if U.S. origin</p> <p>13 was an essential term of the deal that you wanted to</p> <p>14 make, it would not be mentioned in any of the</p> <p>15 documentation?</p> <p>16 A. My point is that if it was open origin it</p> <p>17 would have been in the contract. It was not.</p> <p>18 Q. Your testimony is that if you make a deal</p> <p>19 where the origin of the material from the United States</p> <p>20 is an essential term of what you wanted, it would be a</p> <p>21 normal thing for you to see no mention of that in any of</p> <p>22 the paperwork? Is that your testimony?</p> <p>23 A. My testimony is once the origin has been</p> <p>24 determined, the specific port, not the origin, the</p> <p>25 specific port, it will on the contract and it will be in</p>	<p style="text-align: right;">446</p> <p>1 That's just a little over 30 minutes after Mr. Pascu's</p> <p>2 July 29, 2008, 4:08 p.m. e-mail that was in Exhibit 35?</p> <p>3 A. It is.</p> <p>4 Q. Did you see this e-mail on July 29th?</p> <p>5 A. I don't remember exactly.</p> <p>6 Q. Is this something that would have been part of</p> <p>7 Mr. Pascu's job to take care of?</p> <p>8 A. I think it would have been Mr. Pascu's</p> <p>9 responsibility to bring up any issues he saw as a result</p> <p>10 of this communication --</p> <p>11 Q. Okay.</p> <p>12 A. -- which I believe he did.</p> <p>13 Q. And it says -- on No. 1, Mr. Rajevac tells</p> <p>14 Mr. Pascu, "Your comments on the contract are well noted</p> <p>15 and accepted except for demurrage time bar, which is</p> <p>16 90 days as per industry standard." Correct, sir?</p> <p>17 A. That's what it says.</p> <p>18 Q. Let's go back to Exhibit 37. Near the bottom</p> <p>19 of that page in Mr. Rajevac's e-mail under Point No. 3</p> <p>20 on the first page, Mr. Rajevac says, "As far as the</p> <p>21 shipment details, we sold on CFR basis with arrival</p> <p>22 window. So once you declare the discharge port by</p> <p>23 August 8, we will be able to decide whether to give you</p> <p>24 a deep sea cargo, which at that point will most likely</p> <p>25 be in the water, or an Asian origin cargo." Did I read</p>
<p style="text-align: right;">445</p> <p>1 the purchase order system.</p> <p>2 Q. But your testimony is that if you believed</p> <p>3 origin from the U.S. was essential to what you wanted,</p> <p>4 it would be a normal thing for you to see no mention of</p> <p>5 it in any of your paperwork. Is that what you believe?</p> <p>6 A. I believe the communications were silent on</p> <p>7 origin and I expected that once the exact port has been</p> <p>8 identified that they would appear on the contract.</p> <p>9 So in retrospect, you know, it's easy to</p> <p>10 see that had I gone back in time I didn't catch it, and</p> <p>11 that was my mistake. It's actually Tricon's mistake,</p> <p>12 but I didn't catch it. And -- but that doesn't change</p> <p>13 the fact that I never asked for non-U.S. material. I</p> <p>14 never gave Ed Leyman the authority to purchase non-U.S.</p> <p>15 material.</p> <p>16 Q. Let's take a look at exhibit -- what's been</p> <p>17 previously marked as Exhibit 37. And the bottom is an</p> <p>18 e-mail from Mr. Rajevac to Mr. Pascu dated July 29th,</p> <p>19 2008, at 4:43. Correct?</p> <p>20 A. That's right.</p> <p>21 Q. And that is, oh, just a little -- just a</p> <p>22 little over 30 minutes after Mr. Pascu's e-mail to him</p> <p>23 that was in Exhibit 35. Correct?</p> <p>24 A. Say that again. I'm sorry.</p> <p>25 Q. Exhibit 37 is dated July 29th, 2008, at 4:43.</p>	<p style="text-align: right;">447</p> <p>1 that correctly, sir?</p> <p>2 A. That's what I see.</p> <p>3 Q. And it is not uncommon to sell cargo that's</p> <p>4 already in the water. Correct?</p> <p>5 A. It's not uncommon.</p> <p>6 Q. And that's what he means by a deep sea cargo?</p> <p>7 A. That's right.</p> <p>8 Q. But certainly, sir, this is a clear statement</p> <p>9 on Mr. Rajevac's part that they may -- would not</p> <p>10 necessarily give you U.S. origin material. Correct?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Did Mr. Pascu inform you of this when he got</p> <p>13 it?</p> <p>14 A. At some point I -- it was brought to my</p> <p>15 attention. And it appears here that Laurentiu forwarded</p> <p>16 this to me on July 31st because there was some period of</p> <p>17 discovery. I just don't remember the details.</p> <p>18 Q. Do you recall telling Mr. Pascu that you had</p> <p>19 to have U.S. origin before July 29th?</p> <p>20 A. Yes.</p> <p>21 Q. Mister -- Dr. Wilson, calling your attention</p> <p>22 to Exhibit 42, that appears to be a series of instant</p> <p>23 messages between you and Brad Lockwood?</p> <p>24 A. Appears to be.</p> <p>25 Q. Okay. And in this set of instant messages,</p>

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<p style="text-align: right;">448</p> <p>1 you're asking Mr. Lockwood whether Tricon would be 2 interested in buying back the MX that Vinmar had bought. 3 Correct?</p> <p>4 A. I don't remember if that's what it was about. 5 Q. Okay. Well, take a look at the last entry 6 from Rick Wilson at the bottom, which is the next from 7 the last. It says, "RickWilson@sbcglobal.net, 8 7-31-2008, 9:41:27 a.m." 9 And it said, "Brad, if you want to wipe 10 the slate clean, we can do that. Otherwise, I have 11 contract obligations. I supply info." Did I read that 12 correctly, sir?</p> <p>13 A. Yes. 14 Q. Okay. So when you say, "wipe the slate 15 clean," that means buy back what you sold me. Correct?</p> <p>16 A. I don't know that that's what this was in 17 reference to -- 18 Q. What -- 19 A. -- in essence so -- 20 Q. What does "wipe the slate clean" mean when you 21 said that?</p> <p>22 A. I don't remember. 23 Q. Now, you state that you have other contractual 24 obligations that you can use the material to satisfy. 25 Correct?</p>	<p style="text-align: right;">450</p> <p>1 A. I don't remember. 2 Q. Do you remember telling Mr. Lockwood before 3 July 31st at 1:43 p.m. that the material had to be from 4 the USA?</p> <p>5 A. I don't remember. 6 Q. And that is at 1:43 p.m., several hours after 7 you had offered to buy the material back and told 8 Mr. Lockwood that you had other obligations you could 9 fulfill. Correct?</p> <p>10 A. I don't know if this IM is in relation -- 11 necessarily in relation to this refusal. 12 Q. I'll show you now, Dr. Wilson, what's 13 previously marked as Exhibit No. 12. If you would take 14 a look a few pages in to the page marked TRI 00045, near 15 the bottom of the page. 16 It appears to be communications between 17 Mr. Leyman and Mr. Lockwood by instant message?</p> <p>18 A. Yes. 19 Q. If you will look at the first line on the day 20 7-23 of 9:28 a.m. 53. It's a communication by 21 Mr. Leyman. He says, "No MX or NPX buyers yet. Asia 22 got beaten up last night." 23 Do you recall that the price for MX and 24 NPX in Asia started to fall in the night of July 22nd? 25 A. I know it is a historical fact. I don't</p>
<p style="text-align: right;">449</p> <p>1 A. That's what this says. 2 Q. The communication between Mr. Rajevac and 3 Mr. Pascu is July 29, isn't it, sir?</p> <p>4 A. That's correct. 5 Q. Okay. Two days later, you're telling 6 Mr. Lockwood that you would buy the material back and 7 that you have other contracts you can fulfill?</p> <p>8 A. That's what the IM suggests, yes. 9 Q. I'll show you now what's previously marked as 10 Exhibit 17. And near the bottom of it is an e-mail 11 communication from you to Mr. Rajevac. Correct?</p> <p>12 A. That's correct. 13 Q. Okay. And that is where you say, "Vuk, we 14 cannot accept open origin from this -- for this 15 material. It must be from the USA?"</p> <p>16 A. That's right. 17 Q. Is this the first time that you made that 18 communication to Mr. Rajevac? Let me put it this way. 19 Is this the first --</p> <p>20 A. To Mr. Rajevac I believe this is the first 21 time I personally communicated that to him. 22 Q. Okay. And this is also the first time that 23 you had communicated to anybody at Tricon -- you 24 yourself had communicated to anybody at Tricon that the 25 material had to be from the USA?</p>	<p style="text-align: right;">451</p> <p>1 remember if I recognized it at the time. 2 Q. But it did happen? 3 A. Yes. 4 Q. And that's what Mr. Leyman means when he says, 5 "Asia got beaten up last night"? Well, is that what you 6 understand it says?</p> <p>7 A. "Asia got beaten up." That's a term that 8 would suggest that prices went down but it's not -- it's 9 not specific in terms of what prices. 10 Q. Okay. I think you testified earlier that was 11 a surprise to you; you actually expected the price of MX 12 in Asia to go up?</p> <p>13 A. That's right. 14 Q. Okay. Dr. Wilson, if I can call your 15 attention to Exhibit 43, which appears to be in -- 16 instant message communications between you and 17 Mr. Leyman. Is that what it appears to be?</p> <p>18 A. That's correct. 19 Q. On July 31st, 2008, between 9:30 and about 20 10:18 in the morning or about 1:00 -- well, beginning at 21 9:26:08 a.m. and ending at 1:02 in the afternoon. 22 Correct?</p> <p>23 A. That's -- that's correct. 24 Q. If you will look at the second line at 25 9:26:42 a.m., Mr. Leyman is asking you, "Is your 5 KT</p>

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<p style="text-align: right;">452</p> <p>1 CFR 1 H Sept BBLs still available?" Do you see that,</p> <p>2 sir?</p> <p>3 A. Yes.</p> <p>4 Q. Is that referring to the five metric tons</p> <p>5 purchased from Tricon?</p> <p>6 A. I don't know.</p> <p>7 Q. Well, at 10:16:43 a.m., you asked Mr. Leyman,</p> <p>8 "Price for 1H September MX." Do you see that, sir?</p> <p>9 A. Yes.</p> <p>10 Q. And he responds, "Seller had indicated 1250</p> <p>11 early this morning."</p> <p>12 Your response is, "I'll wait."</p> <p>13 Then Mr. Leyman says, "What price will you</p> <p>14 be looking for?"</p> <p>15 And your response is, "It would be nice to</p> <p>16 profit."</p> <p>17 Did I read that all correctly, sir?</p> <p>18 A. That's correct.</p> <p>19 Q. Calling your attention now to Exhibit 44,</p> <p>20 Dr. Wilson, this appears to be an e-mail from you to</p> <p>21 Devang Mehta on July 31st at 9:30 -- 2008 at 9:31 p.m.</p> <p>22 Is that correct sir?</p> <p>23 A. Yep.</p> <p>24 Q. Who is Devang Mehta?</p> <p>25 A. Devang is in charge of chemicals trading.</p>	<p style="text-align: right;">454</p> <p>1 A. That's correct.</p> <p>2 Q. And the statement that appears on the last two</p> <p>3 lines of Exhibit 44 is just a quotation from that</p> <p>4 e-mail?</p> <p>5 A. I believe that was the intent.</p> <p>6 Q. Okay. And if you would look at the first</p> <p>7 written time, 7:22. You say, "Devang, here is a summary</p> <p>8 of the communications with Tricon I had -- here is a</p> <p>9 summary of the communications with Tricon that I had</p> <p>10 had."</p> <p>11 On the first line it says, "7:22." Do you</p> <p>12 see that, sir?</p> <p>13 A. Uh-huh.</p> <p>14 Q. And is -- and that's a "yes"?</p> <p>15 A. I see that, yes.</p> <p>16 Q. Okay. And that is July 22, which is the day</p> <p>17 that the deal was originally made?</p> <p>18 A. If that's the fact.</p> <p>19 Q. Let's take a look at all the way back in the</p> <p>20 beginning. I think it was 2. Yeah, take a look at</p> <p>21 Exhibit 2.</p> <p>22 A. Okay. No, it's not there. 3, 4, 6, 9, 10,</p> <p>23 15, 18, 17. Oh, here we go. Okay. Can you repeat</p> <p>24 that, please?</p> <p>25 Q. Yeah. If you would just look at Exhibit 2,</p>
<p style="text-align: right;">453</p> <p>1 Q. Okay. He would have been your boss?</p> <p>2 A. That's right.</p> <p>3 Q. What was the purpose of this e-mail that you</p> <p>4 sent Mr. Mehta?</p> <p>5 A. I think they were at -- Vinmar I imagine was</p> <p>6 asking me what was going on so I was advising them.</p> <p>7 Q. Okay. If you'll look at the very last two</p> <p>8 lines on Exhibit 44, sir. See where it says, "7:30,</p> <p>9 Rick note to Vuk operations. We cannot accept open</p> <p>10 origin for this material. It must be from USA. Surely</p> <p>11 you own this product. Please advise regarding shipment</p> <p>12 details."</p> <p>13 A. Shipping, yeah.</p> <p>14 Q. Shipping details. That appears to be a</p> <p>15 quotation from Exhibit 17.</p> <p>16 A. I believe it's a -- I believe it was a copy</p> <p>17 from an e-mail, yeah.</p> <p>18 Q. Okay. And the reason that I ask, sir, is</p> <p>19 because if you note on Exhibit 44, the date that you put</p> <p>20 on that is 7:30, but Exhibit 17 is dated July 31. My</p> <p>21 question is, did you just make a mistake and put 7:30</p> <p>22 when it should have been 7:31?</p> <p>23 A. I don't remember.</p> <p>24 Q. You agree that your e-mail to Mr. Rajevac that</p> <p>25 is at the bottom of Exhibit 17 is dated July 31?</p>	<p style="text-align: right;">455</p> <p>1 that is the first MOAB confirm. Correct?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. The date on that is July 22 --</p> <p>4 A. That's right.</p> <p>5 Q. -- 2008?</p> <p>6 A. That's right.</p> <p>7 Q. So my question to you is, when you write to</p> <p>8 Mr. Mehta, "7-22, MOAB confirm," you're making a</p> <p>9 reference to Exhibit No. 2?</p> <p>10 A. I believe that was the intent.</p> <p>11 Q. Okay. I think even the amended confirms are</p> <p>12 all also dated July 22. Correct, sir?</p> <p>13 A. July 22.</p> <p>14 Q. 3 and --</p> <p>15 A. No. 3.</p> <p>16 Q. No. 3 and No. 4 are the amended MOAB confirms</p> <p>17 and they're also dated July 22. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. And when you tell Mr. Mehta, "7-22, MOAB</p> <p>20 confirm, P equals I 10 CFR" -- P meaning price. Correct?</p> <p>21 A. That's right.</p> <p>22 Q. T -- "T/C 30 days, 1 to 15 September, seller's</p> <p>23 option." What does -- is it TIC or T -- or TK probably?</p> <p>24 I'm having a hard time reading what it says, but that's</p> <p>25 referring to the payment terms. Correct, sir?</p>

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<p style="text-align: right;">456</p> <p>1 THE REPORTER: To the what? Excuse me. 2 MR. DIAZ-ARRASTIA: Payment terms. 3 A. Actually I'm not sure. 4 Q. (BY MR. DIAZ-ARRASTIA) You're not sure. 5 Okay. "Seller's option declared by August 8th," and 6 then you write in parentheses, "No requirement for load 7 port." You see that, sir? 8 A. Uh-huh. 9 Q. Okay. Is that a "yes"? 10 A. Yes. Load port. 11 Q. Yeah. And it is true that you could load -- 12 that there could be foreign MX in storage at a U.S. port 13 and you could load MX in a U.S. port that was not of 14 U.S. origin. Is that correct? 15 A. The origin is determined at the point of -- at 16 the load point so where the physical balance coming -- 17 came from. I've never seen that happen, but in concept 18 it could. 19 Q. Calling your attention to Exhibit 45, 20 Dr. Wilson. It's an e-mail communication from you to 21 Hermant Goradia, is that correct, sir -- 22 A. That's right. 23 Q. -- on August the 6th? 24 And the subject is Tricon communication 25 draft to discuss. Correct?</p>	<p style="text-align: right;">458</p> <p>1 A. I believe so. 2 Q. Okay. If you'll take a look at Exhibit 9, 3 that is the communication as it was sent to Mr. Leyman 4 and then he forwarded it to Tricon. Correct? 5 A. That's the e-mail trail here, that's correct. 6 Q. That is the same communication that you had 7 drafted in Exhibit 45? 8 A. That's correct. 9 Q. And your proposal in this e-mail is both for 10 U.S. origin material to be delivered at Korea or Taiwan 11 by no later than the 15th of September. Correct? 12 A. Yes. 13 Q. Take a look at Exhibit 18, which I think we've 14 looked at earlier. Now, in that e-mail, Mr. Lockwood is 15 proposing to deliver U.S. origin MX that has an ETA of 16 September the 6th. Is that correct, sir? 17 A. That's correct. 18 Q. And you did not accept that proposal? 19 A. That's correct. 20 Q. Mr. Wilson, is it true that the price of MX 21 continued to drop through July and August of 2008? 22 A. I don't remember. 23 Q. Okay. Is it true that it was very difficult 24 to find anyone interested in buying any MX during that 25 period of time in 2008?</p>
<p style="text-align: right;">457</p> <p>1 "Yes," sir? I'm sorry. 2 A. That's correct. 3 Q. Who is Mr. Goradia? 4 A. He is one of the owners of Vinmar. 5 Q. Okay. What was the purpose of this e-mail? 6 A. The purpose of the e-mail was -- what we 7 wanted to do was stick to the original terms of the 8 deal. And at this point in time, doing so was going to 9 incur considerable loss to Vinmar. So I was notifying 10 the owners. 11 Q. What's going on in Exhibit 45 is you are 12 drafting an e-mail. Correct? 13 A. Yes. 14 Q. Okay. And you were going to send the e-mail 15 to Ed Leyman? 16 A. Or Tricon, yeah. 17 Q. Why were you running a draft of your 18 communication by Mr. Goradia, Mr. Antonvich and 19 Mr. Mehta? 20 A. Because it's their company. 21 Q. Did they ask you to draft that communication? 22 A. No. 23 Q. It was your idea to send this communication? 24 A. Yes. 25 Q. And did you actually send that communication?</p>	<p style="text-align: right;">459</p> <p>1 A. I did not sell any. I can say that. 2 Q. If you will take a look at Exhibit 46, 3 Dr. Wilson. It appears to be instant message 4 communications between you and Ed Leyman. Correct, sir? 5 A. Yes. 6 Q. If you will take a look at about two thirds of 7 the way down. It says, "Ed Leyman, MOAB Oil, any buying 8 interest FOB USGC?" Have you found that, sir? 9 A. Yes. 10 Q. And your response is, "Re: Buying interest not 11 today. Customers are hiding." 12 A. That's right. 13 Q. Did I read that correctly, sir? 14 A. You did. 15 Q. Are you telling Mr. Leyman that there are no 16 customers buying MX when these communications took 17 place? 18 A. I don't remember the intent of the 19 conversation, but that's what the words would suggest. 20 EXAMINATION 21 BY MR. LEE: 22 Q. Do you know for certain whether the receipt of 23 the e-mail from Mr. Pascu on July 31st at 1:43 was the 24 first time that you became aware that Tricon had a 25 different understanding of this alleged transaction?</p>

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<p style="text-align: right;">460</p> <p>1 A. Is that the first time? I can't say that, no.</p> <p>2 Q. Okay. Are you aware of any other written</p> <p>3 communication that was sent to you prior to July 31st at</p> <p>4 1:39 p.m. that would have -- that discussed Tricon's</p> <p>5 claim that it could provide Asian origin MX?</p> <p>6 A. No, but usually if there were an issue -- I</p> <p>7 mean, in this case, I just don't remember. The standard</p> <p>8 was Laurentiu to call me rather than send me an e-mail.</p> <p>9 Q. Okay. And so it's very possible that the</p> <p>10 first time you actually found out about this from</p> <p>11 Mr. Pascu was on the afternoon of July 31, 2008.</p> <p>12 Correct?</p> <p>13 A. I can't state unequivocally the exact time</p> <p>14 that I discovered that there was a -- there was an</p> <p>15 issue, but I remember the emotional part of discovering</p> <p>16 there was an issue because, you know, you look back and</p> <p>17 you see the pieces that weren't quite right and, you</p> <p>18 know, it hits you. So exactly what time I got that</p> <p>19 information was -- I just can't tell you. I don't know.</p> <p>20 Say that again. Mr. Leyman --</p> <p>21 Q. Did Mr. Leyman tell you that as part of his</p> <p>22 broker service that he recorded phone calls?</p> <p>23 A. Yes, he did.</p> <p>24 Q. Okay. Does it -- does it surprise you to find</p> <p>25 out that there are no tape recordings of this</p>	<p style="text-align: right;">462</p> <p>1 STEVE SIMPSON,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 DIRECT EXAMINATION (2:05 p.m.)</p> <p>4 BY MR. DIAZ-ARRASTIA:</p> <p>5 Q. Mr. Simpson, could you state your name for the</p> <p>6 record, please?</p> <p>7 A. Steve C. Simpson.</p> <p>8 Q. And tell us a little bit about your background</p> <p>9 and experience trading petrochemicals?</p> <p>10 A. After college and a short time in the Army, I</p> <p>11 went with a company called Kerr McGee. I started there</p> <p>12 in the accounting group. And after 12 and a half years,</p> <p>13 I had moved up to manager of international trading and</p> <p>14 transportation, bought crude oils and --</p> <p>15 Q. Could you raise your voice a little bit,</p> <p>16 please?</p> <p>17 A. Sure. I was manager of international trading</p> <p>18 and transportation for them. From there -- after 12 and</p> <p>19 a half years, I left Kerr McGee and went to Northeast</p> <p>20 Petroleum. Northeast Petroleum, I was VP of products --</p> <p>21 of crude oil supply and then of products supply later</p> <p>22 and manned the supply group for a couple of years.</p> <p>23 At that time they were sold to Charter</p> <p>24 Oil. And I worked for about a year in Houston at</p> <p>25 Charter Oil as vice president of product supply. And</p>
<p style="text-align: right;">461</p> <p>1 transaction?</p> <p>2 A. Yes.</p> <p>3 (This is the end of the playback of the</p> <p>4 edited version of the videotaped deposition of Richard</p> <p>5 W. Wilson, Ph.D., that was originally taken on</p> <p>6 August 30, 2010.)</p> <p>7 JUDGE BENTON: All right. Let's take</p> <p>8 about a ten-minute break.</p> <p>9 (Recess from 1:49 p.m. to 2:04 p.m.)</p> <p>10 JUDGE BENTON: Okay. Back on the record.</p> <p>11 Call your next witness.</p> <p>12 MR. DIAZ-ARRASTIA: Our next witness is</p> <p>13 Steve Simpson.</p> <p>14 JUDGE BENTON: Mr. Simpson, if you will</p> <p>15 your raise your right hand.</p> <p>16 (At this time the witness was duly sworn</p> <p>17 by Judge Benton.)</p> <p>18 MR. DIAZ-ARRASTIA: Members of the Panel,</p> <p>19 Mr. Simpson's report was previously submitted to the</p> <p>20 panel, but it's also in the Tricon Exhibit Book under</p> <p>21 Tricon Exhibit 36, 36.</p> <p>22 JUDGE BENTON: Tricon 36.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">463</p> <p>1 then I moved to London for about two and a half, almost</p> <p>2 three years, senior trader.</p> <p>3 I moved back from London, started a</p> <p>4 company called Petrotex and I traded petroleum futures</p> <p>5 as well as other futures, wheat, corn on the futures</p> <p>6 markets.</p> <p>7 Then in '89 I went to work for -- back to</p> <p>8 work for Kerr-McGee in the Houston office in the</p> <p>9 refining group. And what I did there is I traded the</p> <p>10 futures for them for about six or eight months and then</p> <p>11 the man that had their petrochemicals got killed in a</p> <p>12 balloon accident and they offered me that job and I took</p> <p>13 the petrochemicals over.</p> <p>14 About nine months later, they offered me</p> <p>15 specialty products, and I did that until they sold their</p> <p>16 refineries in 1995. In 1995, I went to work for a</p> <p>17 trading company called Rio Energy. I wanted to do</p> <p>18 aromatics and gasoline feedstocks. And I did that for</p> <p>19 about a year and then I decided I didn't want to be in</p> <p>20 that business.</p> <p>21 I left there and I went to Valero Energy</p> <p>22 in '97. And in 2008, I retired from Valero Energy. I</p> <p>23 started there as manager of petrochemicals. We had a</p> <p>24 big fractionation unit to produce xylenes. And I did</p> <p>25 that and then I did a lot of different specialty</p>

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<p style="text-align: right;">464</p> <p>1 products, did a lot of aromatics.</p> <p>2 And then in 2001, we bought Diamond</p> <p>3 Shamrock. At that time I became director of</p> <p>4 petrochemicals which handled aromatics and propylenes.</p> <p>5 And then I ended up retiring as executive director of</p> <p>6 petrochemicals.</p> <p>7 Q. And are you still involved in the</p> <p>8 petrochemicals markets, sir?</p> <p>9 A. Yes. I retired May 31st. And June 1st I went</p> <p>10 to work for Valero as a consultant on a part-time basis</p> <p>11 on a project where you reduce the benzene in the</p> <p>12 gasoline pool, and that project will probably be over</p> <p>13 around the first quarter of 2011, a lot of capital</p> <p>14 expense so we kind of do those things.</p> <p>15 And then also I write a weekly trading</p> <p>16 report for the aromatics group on what they should be on</p> <p>17 the trading side, if they should buy or sell or do</p> <p>18 nothing, hold.</p> <p>19 Q. And during your career that you have</p> <p>20 described, sir, have you been actively involved as a</p> <p>21 trader?</p> <p>22 A. Yes.</p> <p>23 Q. And on how many trades have you personally</p> <p>24 performed?</p> <p>25 A. At Valero, I've done over a thousand trades.</p>	<p style="text-align: right;">466</p> <p>1 Q. And is it also customary that the principals</p> <p>2 do not communicate directly with each other but only</p> <p>3 through the broker?</p> <p>4 A. It can be customary to do that or communicate</p> <p>5 with each other afterwards or even during it sometimes,</p> <p>6 but it's customary. I mean, it's fine. A lot of people</p> <p>7 don't talk to each other. They just do it through a</p> <p>8 broker.</p> <p>9 Q. Mr. Simpson, someone just pointed out to me.</p> <p>10 Was the last time you personally made an MX trade in</p> <p>11 March of 2008 or March of 2009?</p> <p>12 A. 2008. Did I say '8?</p> <p>13 Q. I think you might have said '9.</p> <p>14 A. Oh, I'm sorry. It's 2008, right before I</p> <p>15 retired.</p> <p>16 Q. Okay. Mr. Simpson, do you know Ed Leyman?</p> <p>17 A. Yes.</p> <p>18 Q. Who is Ed Leyman?</p> <p>19 A. He's a broker. He's been in the industry.</p> <p>20 Sometime in the '90s is the first time I ran across him.</p> <p>21 Q. Okay. Was he the first broker in the U.S. to</p> <p>22 deal in MX?</p> <p>23 A. I believe so. He started out doing specialty</p> <p>24 products where something would be off-spec and he'd</p> <p>25 broker those. He was good at understanding the chemical</p>
<p style="text-align: right;">465</p> <p>1 Q. And how much of your trading experience has</p> <p>2 been with aromatics?</p> <p>3 A. I'd say probably 50 percent of it.</p> <p>4 Q. And what are some of the other materials that</p> <p>5 you have traded?</p> <p>6 A. Propylene is a big material we traded a lot</p> <p>7 of. I've done all the gasoline blend stocks from MTB to</p> <p>8 methanol, LPG's. I've bought natural gas. I've done</p> <p>9 anything that goes into or out of a refinery as a bulk</p> <p>10 material.</p> <p>11 Q. And have you also managed traders?</p> <p>12 A. Yes.</p> <p>13 Q. While you managed traders, were you also</p> <p>14 personally doing trades?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. When was the last time that you</p> <p>17 personally made a mixed xylenes trade?</p> <p>18 A. I believe that was in March of 2009.</p> <p>19 Q. Mr. Simpson, in trading -- in petrochemicals</p> <p>20 trading, is it common to use brokers when making deals?</p> <p>21 A. Yes.</p> <p>22 Q. And when brokers are used, is it customary</p> <p>23 that the same broker will represent both sides of the</p> <p>24 transaction?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">467</p> <p>1 makeups of different products and so he would broker</p> <p>2 those. And then he started trading in benzene, toluene</p> <p>3 and xylene.</p> <p>4 Q. And how many brokers deal in U.S. -- in MX in</p> <p>5 the U.S.?</p> <p>6 A. I think there's about three to five now. Some</p> <p>7 people come in. Some people go back out so...</p> <p>8 Q. What is Mr. Leyman's reputation in the</p> <p>9 petrochemicals trading industry?</p> <p>10 A. I think he's an extremely good broker, does a</p> <p>11 good job at what he does. If he didn't, people wouldn't</p> <p>12 trade with him.</p> <p>13 Q. Have you personally used Mr. Leyman to broker</p> <p>14 trades?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And did you find that his reputation was</p> <p>17 deserved?</p> <p>18 A. Yes, very good.</p> <p>19 Q. And let me ask you, Mr. Simpson, if a broker</p> <p>20 favored one side over another in a deal, would that</p> <p>21 broker stay in business long?</p> <p>22 A. No, sir.</p> <p>23 Q. Why?</p> <p>24 A. Not at all. Because you want a fair playing</p> <p>25 field. You don't want the other party to know</p>

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<p style="text-align: right;">468</p> <p>1 everything going on and you know nothing. So if you 2 felt like they were leaning one way or the other, you 3 just wouldn't talk to them. 4 Q. And obviously a broker has to bring parties 5 together. Correct? 6 A. Yes, sir. 7 Q. If-- 8 A. That's all he's doing is just bringing two 9 parties together. 10 Q. A broker who has a reputation of favoring one 11 party is going to have a hard time bringing the other 12 party along. Correct? 13 A. Correct. 14 Q. Can you tell me how long Mr. Leyman has been 15 in business? 16 A. I just knew of him sometime in the '90s. 17 Q. Sir, in petrochemicals trading, is it a 18 general expectation that traders have that a broker will 19 not disclose the identity of a counterparty before a 20 deal is made? 21 A. Say that again, please. 22 Q. Is it a general expectation in petrochemicals 23 trading that a broker will not disclose a trader's 24 identity before a deal is made? 25 A. No. Only if he's asked not to. And if he's</p>	<p style="text-align: right;">470</p> <p>1 confidentiality and the other one does not? 2 A. I don't believe there's anything that happens. 3 I believe he's -- he's still fair to both parties. He 4 just doesn't tell what your name is, who's out there 5 doing what. 6 Q. So he may disclose one side but not the other? 7 A. Yes. 8 Q. And that's not unusual? 9 A. Not unusual at all. 10 Q. Tell me, sir, what is meant by an indication? 11 A. That's where you talk to a broker or to 12 another party saying, "I might be an interested seller 13 of mixed xylenes. I might be interested buyer of mixed 14 xylenes. I might want to sell 20,000 barrels. I might 15 want to sell 5,000 tons or I might want to buy those." 16 It's not a firm offer. It doesn't tell a 17 party, "I'm here to do this deal." It's just a 18 discussion matter. 19 Q. And so like I might be interested in buying or 20 I might be interested in selling, but I'm not making a 21 commitment? 22 A. Correct. 23 Q. And then tell me what a firm bid is. 24 A. That is where you are committing to do 25 whatever you tell them it is. And you always tell them</p>
<p style="text-align: right;">469</p> <p>1 asked not to, he won't disclose it. 2 Q. Okay. And sometimes it happens that a trader 3 may ask that his identity not be disclosed? 4 A. Yes. 5 Q. And the broker would respect that? 6 A. Yes. 7 Q. What happens if the trader does not request 8 confidentiality? 9 A. A lot of times when I would talk to him and 10 he'd make -- he'd have something out there that I was 11 really interested in doing, I would ask him probably who 12 the party was. 13 Q. And would he tell you? 14 A. If it wasn't confidential, if they didn't say 15 not to tell me, he'd tell me. 16 Q. And does it sometimes happen that one side 17 requests confidentiality and the other one does not? 18 A. Yes, sir. 19 Q. Is that unusual? 20 A. No. It can be -- it's pretty general. I 21 mean -- 22 Q. And what happens? 23 A. I usually never ask for confidentiality and 24 some of the companies did and so Ed wouldn't tell you. 25 Q. What happens when one side requests</p>	<p style="text-align: right;">471</p> <p>1 it's a firm bid. And if it's -- and it's -- usually 2 what you have included in all that is quantity, quality, 3 price, the real idea of what you're trying to do with 4 that product that you're dealing with. 5 Q. Okay. Firm bid, does that come from the 6 buyer's side? 7 A. Yes. 8 Q. Okay. So a firm bid is when a buyer says, "I 9 will buy on these terms"? 10 A. Yes, sir. 11 Q. And it's a commitment? 12 A. Yes. 13 Q. Okay. What is a firm offer? 14 A. It's from the seller's side. He makes a firm 15 offer that he'll do this and that if this number... 16 That's it. 17 Q. Same thing from the seller's side? 18 A. Yes. 19 Q. Okay. And in petrochemicals trading, do 20 traders give brokers authority to make a deal by giving 21 the broker a firm offer or a firm bid? 22 A. Yes, sir. 23 Q. And we've talked a little bit about that, but 24 what usually is contained in a firm offer or a firm bid? 25 A. Well, you might not know the party at first,</p>

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<p style="text-align: right;">472</p> <p>1 but you will, but then you will know what the product</p> <p>2 is, the quantity, the quality usually of the product</p> <p>3 because that might have -- there's different qualities.</p> <p>4 So the quantity on -- and you try to -- Ed</p> <p>5 always works to try to get both sides saying the same</p> <p>6 thing on volumes, so if it's metric tons or barrels.</p> <p>7 You have your price, which is one of the important</p> <p>8 things, which are fixed or floating. You have your --</p> <p>9 usually your payment terms. And pretty standard in our</p> <p>10 industry is 30 days with and LC if it's required by</p> <p>11 whoever's selling department requires it.</p> <p>12 Q. Now, if there is something else special that a</p> <p>13 trader has such as "I need a particular origin for my</p> <p>14 material," is that also putting a firm bid or firm</p> <p>15 offer?</p> <p>16 A. If you want a specific origin, you definitely</p> <p>17 put that in your firm bid or your firm offer.</p> <p>18 Q. And I think you stated in the report that if</p> <p>19 you -- that origin of material is an up-front term in</p> <p>20 any negotiation. Do you recall that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Why is it important that origin be an up-front</p> <p>23 term?</p> <p>24 A. If it's not an up-front term, then you could</p> <p>25 have different origins that you move the product from.</p>	<p style="text-align: right;">474</p> <p>1 Brazil all the same, within a certain spec?</p> <p>2 A. Within a certain spec, yes, sir, it is.</p> <p>3 Q. Now, Mr. Simpson, in an industry -- when is it</p> <p>4 considered that a deal is made in the trade industry?</p> <p>5 A. If you're working direct, two parties just</p> <p>6 confirm that it's a -- it's a done deal and the deal is</p> <p>7 done right then. If it's through a broker like Ed</p> <p>8 Leyman, it's whenever Ed Leyman gets both sides lined up</p> <p>9 and he says the deal's done.</p> <p>10 Q. If the firm bid meets the firm offer, you have</p> <p>11 a deal?</p> <p>12 A. Yes, sir, if you -- as long as you give them</p> <p>13 the authority.</p> <p>14 Q. And you give them that authority by making a</p> <p>15 firm bid or a firm offer?</p> <p>16 A. You give them that authority up front.</p> <p>17 Q. Now, if a broker is used, is it customary for</p> <p>18 the broker to send a written confirm?</p> <p>19 A. In today's market, yes, it is. That probably</p> <p>20 changed from the last ten years. Ten years ago you</p> <p>21 didn't have written confirms.</p> <p>22 Q. Is it important for the trader to review the</p> <p>23 written confirm right away?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And why is that important?</p>
<p style="text-align: right;">473</p> <p>1 As in this case, I mean, it was going to Asia. You have</p> <p>2 a very -- you had a lot of timing issues there and so</p> <p>3 you'd need to know that up front to know that you can</p> <p>4 supply those barrels.</p> <p>5 Q. Okay. Now, in petrochemicals trading, is it</p> <p>6 common for buyers to be concerned with the origin of a</p> <p>7 product?</p> <p>8 A. Only if their -- they think their customer</p> <p>9 would require it.</p> <p>10 Q. Well, is it -- in most of the petrochemical</p> <p>11 trades that you have done, more than 1,000 trades, was</p> <p>12 origin something that the buyer was concerned with?</p> <p>13 A. No, not really.</p> <p>14 Q. Okay. Is it a common thing that --</p> <p>15 A. Majority of the time origin is never</p> <p>16 discussed.</p> <p>17 Q. Okay. And why is it that it's never</p> <p>18 discussed? Is it because MX is a commodity?</p> <p>19 A. MX is traded as a commodity. It's -- you have</p> <p>20 a couple of different specs that you can use, most of it</p> <p>21 Gulf Coast barrels traded with 5211 20 bromine. Europe</p> <p>22 might produce that, Asia can produce that and so you</p> <p>23 just need to know if it's a requirement up front.</p> <p>24 Q. Yeah. Within a certain spec, is MX that's</p> <p>25 manufactured in the U.S. or in Asia or Europe or in</p>	<p style="text-align: right;">475</p> <p>1 A. Just to make sure both parties have the same</p> <p>2 terms and know what they're doing.</p> <p>3 Q. Okay. Can we -- will you take a look at Joint</p> <p>4 Exhibit No. 4, sir, in the Joint Exhibit notebook in</p> <p>5 front of you?</p> <p>6 And we will also put it on the screen.</p> <p>7 Let's look at the second page of that please, sir.</p> <p>8 A. No. 4?</p> <p>9 Q. Yes, Joint Exhibit No. 4, second page.</p> <p>10 A. Okay.</p> <p>11 Q. Is that an example of a broker confirm?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What happens if there is a mistake in the</p> <p>14 confirm?</p> <p>15 A. Usually contact the broker and then you</p> <p>16 usually are -- and/or contact the other party to make</p> <p>17 sure everybody knows there's a mistake in it, to get it</p> <p>18 corrected and get it out -- get it back out as quick as</p> <p>19 you can.</p> <p>20 Q. And would you then expect to see an amended or</p> <p>21 corrected confirm?</p> <p>22 A. Yes.</p> <p>23 Q. And we're not going to put them up on the</p> <p>24 screen, Mr. Simpson, but if you would take a look at</p> <p>25 Joint Exhibits 3 and 2 just ahead of the one you were</p>

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<p style="text-align: right;">476</p> <p>1 looking at. And I think you've seen these before in 2 this case. Correct, sir? 3 A. Yes, sir. 4 Q. Okay. And those appear to be -- these three 5 joint exhibits, 2, 3 and 4, appear to be a series of 6 confirms relating to the same deal for that and contain 7 some corrections and changes? 8 A. Yes, sir. 9 Q. And there's nothing unusual about that in 10 petrochemicals trading, is there? 11 A. Not -- no, sir, there isn't. It's just is 12 your clerk in a hurry when they type it up? Did they -- 13 did you scribble too bad so they couldn't read exactly 14 what you did? Did -- you also maybe just wrote the 15 wrong price down. 16 Q. Okay. And none of exhibits -- Joint Exhibit 17 2, 3 or 4 say anything about the origin of the material. 18 Is that correct? 19 A. No, sir, they do not. 20 Q. What does that mean in the industry? 21 A. It's open origin. 22 Q. Is it the standard in the industry that if 23 material is to be of open origin it has to be put in the 24 confirm, but if it's a specific origin it can be left 25 blank?</p>	<p style="text-align: right;">478</p> <p>1 Q. The notebook that says Tricon Exhibits. 2 A. Oh. 3 Q. First look at Tricon Exhibit No. 1. 4 MR. DIAZ-ARRASTIA: And if you can make 5 it -- 6 Q. (BY MR. DIAZ-ARRASTIA) And, Mr. Leyman, is 7 that an example of a confirm -- Mr. Simpson, is that an 8 example of a confirm that specifies origin? 9 A. No, sir. 10 Q. Exhibit No. 1 in the Tricon book, if you would 11 take a look at the screen, sir, and we'll see where 12 we're looking at. 13 JUDGE WOOD: That may be too far for him. 14 MS. LARSON: Under the quality line. 15 JUDGE WOOD: He's going to need to look at 16 the book. 17 Q. (BY MR. DIAZ-ARRASTIA) Under the quality 18 line. 19 A. Oh, I see it in the quality line. At the end 20 of the quality line is what you're saying. 21 Q. At the end of the quality line, it says, "To 22 be U.S. origin"? 23 A. Yes, sir. 24 Q. Is that an example of a broker confirm that 25 specifies a particular origin?</p>
<p style="text-align: right;">477</p> <p>1 A. Yes. 2 Q. Listen to my question. 3 A. Oh, okay. You said it backwards -- 4 Q. Is it -- 5 A. -- from what I thought you were going to say. 6 Q. Is it standard in the industry that if 7 material is open origin it must be specified in the 8 confirm? 9 A. No, sir. 10 MR. LEE: Objection. Leading. 11 Q. (BY MR. DIAZ-ARRASTIA) But if it's -- 12 JUDGE BENTON: It's overruled. 13 Q. (BY MR. DIAZ-ARRASTIA) But if it's of 14 specific origin, it can be left blank, or is it the 15 other way around? 16 A. If it's -- 17 Q. Or is it the other way around? 18 A. If it's of specific origin, it will be 19 included in the confirm. 20 Q. Okay. Can we -- 21 A. If it's an open origin, you won't ever find it 22 in there. 23 Q. Okay. Take a look at the Tricon Exhibit 24 notebook. 25 A. Which one?</p>	<p style="text-align: right;">479</p> <p>1 A. Yes, sir, and that -- and that's usually where 2 you put it. 3 Q. Okay. And take a look now at the next 4 exhibit, Tricon Exhibit No. 2. 5 A. Okay. 6 Q. In the quality line there, it says, "Product 7 must be non-Iranian or Chinese origin"? 8 A. Yes, sir. 9 Q. Is that another example of a confirm that 10 specifies a particular origin, this time saying it must 11 not be of a particular origin? 12 A. Yes, sir. 13 Q. And you see things like that also? 14 A. Yes. 15 Q. And also take a look at Tricon Exhibit No. 3, 16 the next one, the same place. It says in the quality 17 line, "No Iranian or Chinese origin"? 18 A. Yes, sir. 19 Q. Okay. Again, this is another example of the 20 confirm that specifies the origin? 21 A. Yes, sir. 22 Q. And that is what you would expect to see if 23 origin is an important part of the deal or a term of the 24 deal? 25 A. Yes, sir, it would be included.</p>

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<p style="text-align: right;">480</p> <p>1 Q. Is it also customary in petrochemicals trading</p> <p>2 that after a deal is made the parties will send their</p> <p>3 terms and conditions of sale?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Is that sometimes called passing papers?</p> <p>6 A. That was my term. My -- I say we pass paper</p> <p>7 back and forth to each other. Both parties usually send</p> <p>8 paper and it will have other conditions and terms in</p> <p>9 there. It will be spelled out at a little more in</p> <p>10 detail.</p> <p>11 Sometimes Homeland -- well, in the last</p> <p>12 two or three years, Homeland Security has put some</p> <p>13 requirements so people put those in there now.</p> <p>14 Q. Now, when the parties pass paper, do they --</p> <p>15 in the petrochemicals industry, do they intend to cancel</p> <p>16 the deal that had just been made?</p> <p>17 A. No, sir.</p> <p>18 MR. LEE: Objection. Calls for</p> <p>19 speculation.</p> <p>20 JUDGE BENTON: It's overruled.</p> <p>21 Q. (BY MR. DIAZ-ARRASTIA) What is the intention</p> <p>22 of passing papers?</p> <p>23 A. To add the rest of the terms and conditions in</p> <p>24 there.</p> <p>25 Q. Add terms to the contract?</p>	<p style="text-align: right;">482</p> <p>1 terms and conditions of sale that are passed between the</p> <p>2 parties after a deal is made?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Now, let's take a look at the last page</p> <p>5 of Exhibit No. 5. Do you see where there are spaces for</p> <p>6 signatures?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And have you seen paper that is passed that</p> <p>9 has spaces for signatures at the end?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And is it customary for these</p> <p>12 additional terms to be signed or not to be signed?</p> <p>13 A. In my view, it's customary that they not be</p> <p>14 signed.</p> <p>15 Q. Okay. Is there a difference whether the deal</p> <p>16 might be a long-term contract or a spot deal?</p> <p>17 A. Yes, sir. If it's a long-term contract,</p> <p>18 they're usually signed. When I say a long-term</p> <p>19 contract, I'm talking about a year or longer, what you</p> <p>20 do with a third party.</p> <p>21 Q. Okay. And what's a spot deal?</p> <p>22 A. That's usually a one-time or two-time or</p> <p>23 three-time deal, but it's just very, very prompt --</p> <p>24 Q. And --</p> <p>25 A. -- very quick.</p>
<p style="text-align: right;">481</p> <p>1 A. Right.</p> <p>2 Q. And does it sometimes happen that the parties</p> <p>3 do not reach agreement on some or all of these</p> <p>4 additional terms?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And does that mean that there is no deal?</p> <p>7 A. No, sir. I've disagreed with people on the</p> <p>8 total terms and conditions and we still sold the barrels</p> <p>9 or bought the barrels.</p> <p>10 Q. Okay. If there is agreement on these</p> <p>11 additional terms, do they become part of the deal?</p> <p>12 MR. LEE: Objection. Calls for a legal</p> <p>13 conclusion.</p> <p>14 JUDGE BENTON: It's overruled.</p> <p>15 Q. (BY MR. DIAZ-ARRASTIA) Well, in your</p> <p>16 understanding as a trader, sir, if the side -- if the</p> <p>17 parties agree on these additional terms, is it your</p> <p>18 understanding that they become a part of the deal?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Let's take a look back in the Joint Exhibit</p> <p>21 notebook, sir, Joint Exhibit No. 5, and again beginning</p> <p>22 on the second page of that exhibit.</p> <p>23 A. Page 2. Okay.</p> <p>24 Q. Yes, sir. And actually let's turn to one more</p> <p>25 page after that. And is that an example of additional</p>	<p style="text-align: right;">483</p> <p>1 Q. Do you usually see additional terms signed in</p> <p>2 spot deals?</p> <p>3 A. I never have, no, sir. I've never signed any.</p> <p>4 You know, people will send them to me, but I don't sign</p> <p>5 them.</p> <p>6 Q. In petrochemicals -- when you were trading</p> <p>7 petrochemicals and you ran petrochemicals trading</p> <p>8 operations, was it common for the terms and conditions</p> <p>9 of sale to be negotiated by the operations specialists?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And what is an operations specialist?</p> <p>12 A. In our world, we call them schedulers. They</p> <p>13 schedule the product. They move the product. They</p> <p>14 really take it from you and make sure it's completed and</p> <p>15 done.</p> <p>16 Q. And, Mr. Simpson, if your operations</p> <p>17 specialist or scheduler were to learn that some aspect</p> <p>18 of the deal that was very important to the trader, if</p> <p>19 they were to learn from the counterparty that that was</p> <p>20 not necessarily going to be provided, in your experience</p> <p>21 how long would it take for that operations specialist to</p> <p>22 inform the trader?</p> <p>23 A. In my experience, it would take less than</p> <p>24 30 seconds because it would probably take them that much</p> <p>25 time to get off the phone and get your attention that</p>

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<p style="text-align: right;">484</p> <p>1 you had a problem.</p> <p>2 Q. Would the operations specialist wait a day and</p> <p>3 a half to inform the trader?</p> <p>4 A. No, sir.</p> <p>5 Q. Now, Mr. Simpson, in petrochemicals trading,</p> <p>6 do the terms -- well, let me ask you this. What does</p> <p>7 product origin mean?</p> <p>8 A. Where the product was produced.</p> <p>9 Q. And we have also during the course of this</p> <p>10 hearing heard the term "loading port" or "port of</p> <p>11 loading." What does that mean?</p> <p>12 A. It means where you're going to physically load</p> <p>13 the product from.</p> <p>14 Q. Is it understood in petrochemicals trading</p> <p>15 that origin and load port mean different things?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Is it possible to load MX at a U.S. Gulf port</p> <p>18 that is not of U.S. origin?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And tell us how that can work.</p> <p>21 A. You just work it with customs. And as you</p> <p>22 imported it -- it really wasn't imported. You just put</p> <p>23 it in a bonded tank and work through U.S. customs to</p> <p>24 make sure they knew it wasn't being imported and that</p> <p>25 way it could be exported.</p>	<p style="text-align: right;">486</p> <p>1 guaranteed?</p> <p>2 A. No, sir. It doesn't mean it's guaranteed.</p> <p>3 Q. What does it mean?</p> <p>4 A. It's just that it means it might come from</p> <p>5 there. It might not come from there.</p> <p>6 Q. Now, when Mr. Wilson uses the word, "Re:</p> <p>7 Origin, we won't know until we declare discharge port,"</p> <p>8 to someone in the industry is he talking about the</p> <p>9 loading port or is he talking about where the material</p> <p>10 was manufactured?</p> <p>11 A. He's talking about where the material was</p> <p>12 manufactured.</p> <p>13 Q. Okay. And when Mr. Wilson says, "Most likely</p> <p>14 USG," what does that mean to someone in the industry</p> <p>15 with regard to a guarantee of origin?</p> <p>16 A. It's not a guarantee.</p> <p>17 Q. Does this mean to somebody in the industry</p> <p>18 that there is no guarantee?</p> <p>19 A. That's the way I would read it totally. I</p> <p>20 think the whole industry would.</p> <p>21 JUDGE DAVIDSON: I assume the U.S. in USG</p> <p>22 stand for United States. What does the G --</p> <p>23 THE WITNESS: U.S. Gulf Coast.</p> <p>24 JUDGE DAVIDSON: U.S. Gulf Coast. Got it.</p> <p>25 JUDGE BENTON: Are you passing?</p>
<p style="text-align: right;">485</p> <p>1 Q. Take a look at -- again, in the Joint Exhibit</p> <p>2 notebook, Joint Exhibit No. 8, if we could put that on</p> <p>3 the screen.</p> <p>4 A. 8?</p> <p>5 Q. 8.</p> <p>6 A. Okay.</p> <p>7 Q. I want you to take a look at Re: Origin sort</p> <p>8 of in the middle -- lower middle of the page. Can you</p> <p>9 see where Tracy is highlighting some language on the</p> <p>10 screen?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And that appears to be an e-mail from</p> <p>13 Rick Wilson to Eduardo Anaya on July 25, 2008, at</p> <p>14 10:33 a.m. Do you -- do you see where I'm referring to?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And Mr. Willis telling Mr. Anaya, "Re:</p> <p>17 Origin, we won't know until we declare discharge port.</p> <p>18 Most likely USG."</p> <p>19 A. Yes, sir.</p> <p>20 Q. Let me ask you something else, sir. In the</p> <p>21 petrochemicals industry, is there a difference between</p> <p>22 most likely and guarantee?</p> <p>23 A. Yes, sir, definitely.</p> <p>24 Q. Does most -- does most likely mean that it is</p> <p>25 guaranteed or that it might be but it won't be</p>	<p style="text-align: right;">487</p> <p>1 MR. DIAZ-ARRASTIA: Not yet, sir, but I</p> <p>2 don't have much longer.</p> <p>3 Q. (BY MR. DIAZ-ARRASTIA) Mr. Simpson, what does</p> <p>4 it mean to be long or short on a product like MX?</p> <p>5 A. When you're long on a product, it means you</p> <p>6 bought the material. You might not have it in your</p> <p>7 possession, but you have an obligation to purchase the</p> <p>8 material, and that means you're going to have 5,000</p> <p>9 metric tons that you're long material on. When you're</p> <p>10 short, you've sold the product.</p> <p>11 Q. But you don't yet own it?</p> <p>12 A. But you probably don't yet own it.</p> <p>13 Q. Is it customary for a trader to sell a product</p> <p>14 it does not yet own?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Can that be an important way for a trader to</p> <p>17 make money in petrochemicals trading?</p> <p>18 A. That's usually about the -- that's not the</p> <p>19 only way, but it's the main way they do make money.</p> <p>20 Q. Okay. So do traders sell when they are short</p> <p>21 sometimes?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And do they also sometimes buy when they are</p> <p>24 long?</p> <p>25 A. Yes, sir. The cost of carrying physical</p>

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<p style="text-align: right;">488</p> <p>1 inventory is just too prohibitive for a trader.</p> <p>2 Q. Tell me, sir, is the price of MX volatile?</p> <p>3 A. Extremely.</p> <p>4 Q. Is -- the price of MX, does it track -- tend</p> <p>5 to track the price of crude oil?</p> <p>6 A. Over a long period of time, yes, sir, it will.</p> <p>7 Q. And what can happen to the price -- well, let</p> <p>8 me put it this way. When the price of MX falls rapidly,</p> <p>9 what can happen to the market?</p> <p>10 A. I use the term it freezes, which means there's</p> <p>11 really no spot buyers out there. You still have</p> <p>12 contract agreements between people, and those are</p> <p>13 usually floating prices. And they usually have a</p> <p>14 mechanism that forces that -- get a price fixed for that</p> <p>15 contract, and it's usually a contract month --</p> <p>16 Q. Okay. And --</p> <p>17 A. -- but a --</p> <p>18 Q. And let me -- let me interrupt you there a</p> <p>19 moment.</p> <p>20 A. Okay.</p> <p>21 Q. You're familiar with the sale that Tricon made</p> <p>22 to KP Chemicals --</p> <p>23 A. Yes, sir.</p> <p>24 Q. -- which was the replacement sale in this</p> <p>25 contract?</p>	<p style="text-align: right;">490</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And do you -- is that what you remember</p> <p>3 happening in the second half of 2008 for the MX prices?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And what was happening to the price of crude</p> <p>6 oil at that same time?</p> <p>7 A. It went from \$147 a ton down to about \$32 -- I</p> <p>8 mean \$147 a barrel to \$32 a barrel in a four-month</p> <p>9 period.</p> <p>10 Q. There was a precipitous decline in crude?</p> <p>11 A. Very.</p> <p>12 Q. And a precipitous decline in MX tended to</p> <p>13 track it?</p> <p>14 A. Yes.</p> <p>15 Q. Does it surprise you that under those</p> <p>16 conditions Tricon was not able to find a replacement</p> <p>17 buyer for the Vinmar MX in the spot market in all of</p> <p>18 September of 2008?</p> <p>19 A. No, sir, not at all.</p> <p>20 Q. Now, sir, have you reviewed Mr. Wilson's</p> <p>21 testimony in this case?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Do you remember if Mr. Wilson said whether he</p> <p>24 had a specific sale that he was going to match to the</p> <p>25 Tricon MX?</p>
<p style="text-align: right;">489</p> <p>1 Is that the sort of deal you're talking</p> <p>2 about?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay.</p> <p>5 A. As a term agreement, they don't -- they don't</p> <p>6 know what the price is, but they know what the terms and</p> <p>7 conditions of the pricing are.</p> <p>8 Q. And what happens to spot sales when the market</p> <p>9 freezes?</p> <p>10 A. I just believe you can't find a buyer. You</p> <p>11 can always find a buyer, but what price? It's sort of</p> <p>12 like it might cost you \$200 a metric ton to get someone</p> <p>13 to step up and buy it.</p> <p>14 Q. And how long can the market stay frozen this</p> <p>15 way?</p> <p>16 A. I've seen it up to three or four months.</p> <p>17 Q. And can you tell us what happened to the price</p> <p>18 of MX in the period of July 22, 2008, through</p> <p>19 September 30, 2008?</p> <p>20 A. It went straight down almost. Not totally</p> <p>21 down but it went -- fell very hard.</p> <p>22 Q. Let's take a look at Tricon Exhibit 32 in the</p> <p>23 Tricon notebook.</p> <p>24 A. Oh, Tricon.</p> <p>25 Q. And there's a chart of MX prices.</p>	<p style="text-align: right;">491</p> <p>1 A. He was trying to match a sale to Formosa and</p> <p>2 he had a sales rep -- sales representative, something</p> <p>3 like that that he called him, that was going to their</p> <p>4 office to try to be involved with the bid that Formosa</p> <p>5 was putting out, but he got there too late and he missed</p> <p>6 that bid.</p> <p>7 Q. So is it your understanding that Mr. Wilson</p> <p>8 lost the specific sale that he wanted to match to the</p> <p>9 Tricon MX?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Do you know Formosa?</p> <p>12 A. I know of them, yes. Met them before.</p> <p>13 Q. What is Formosa?</p> <p>14 A. It's a consumer of xylene. Mainly an</p> <p>15 paraxylene producer. They do other things, but that's</p> <p>16 one of the things that they do.</p> <p>17 Q. Does Formosa buy Asian origin MX?</p> <p>18 A. Yes, sir. Primarily most -- I would say most</p> <p>19 of their product is Asian origin.</p> <p>20 Q. In fact, do buyers in Asia buy Asian origin</p> <p>21 MX?</p> <p>22 A. Yes, sir.</p> <p>23 Q. They do that all the time?</p> <p>24 A. All the time.</p> <p>25 Q. Do traders in Asia trade on Asian origin MX?</p>

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<p style="text-align: right;">492</p> <p>1 A. Yes, sir.</p> <p>2 Q. Mr. Simpson, in your opinion what would happen</p> <p>3 to the petrochemicals trading industry if the Tricon</p> <p>4 Vinmar deal in this case is not enforceable?</p> <p>5 A. Then most of the deals that we do would not be</p> <p>6 enforceable.</p> <p>7 MR. DIAZ-ARRASTIA: Pass the witness.</p> <p>8 JUDGE BENTON: Mr. Lee?</p> <p>9 MR. LEE: Yes. Thank you.</p> <p>10 CROSS-EXAMINATION (2:40 p.m.)</p> <p>11 BY MR. LEE:</p> <p>12 Q. Mr. Simpson, how are you today?</p> <p>13 A. Good, sir. You?</p> <p>14 Q. You and I have never met. Right?</p> <p>15 A. No, sir.</p> <p>16 Q. Let me ask you a couple of questions. I may</p> <p>17 jump around a little bit. But you had -- in the Joint</p> <p>18 Exhibit notebook, you were asked about Joint Exhibit</p> <p>19 No. 8, which was an e-mail exchange between Mr. Wilson</p> <p>20 and a gentleman by the name of Eduardo Anaya. Correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Now, just to be clear about all this, I think</p> <p>23 it's obvious but I should ask you a couple of questions</p> <p>24 for the record. You weren't involved in the</p> <p>25 negotiations of this transaction that we're talking</p>	<p style="text-align: right;">494</p> <p>1 Q. You don't know that, though, do you?</p> <p>2 A. No. I don't know their system.</p> <p>3 Q. I mean, he asked for port of origin. Correct?</p> <p>4 A. Right.</p> <p>5 Q. Okay. And so it's very possible that what</p> <p>6 Mr. Wilson was responding to is that he didn't know what</p> <p>7 port it was going to be loaded from. Correct?</p> <p>8 A. Could be.</p> <p>9 Q. Okay. It is common for people in the industry</p> <p>10 to use brokers to trade petrochemicals. Correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And you would agree with me that in order for</p> <p>13 there to be a deal between the parties, the firm bid</p> <p>14 must match precisely the firm offer. Correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And if the broker tells two parties that they</p> <p>17 have a deal but the firm bid did not match the firm</p> <p>18 offer, then the broker's wrong. Correct?</p> <p>19 A. Correct.</p> <p>20 Q. There is no deal on that situation. Correct?</p> <p>21 A. Depending on what the term was or what you</p> <p>22 were talking about.</p> <p>23 Q. Well, if it's in the firm bid and it doesn't</p> <p>24 match the firm offer, there's no deal. Right?</p> <p>25 A. That I don't know. That's something legal.</p>
<p style="text-align: right;">493</p> <p>1 about. Correct?</p> <p>2 A. No, sir.</p> <p>3 Q. And you don't know Mr. Wilson, do you?</p> <p>4 A. No, never met him.</p> <p>5 Q. You don't know Eduardo Anaya, do you?</p> <p>6 A. No, sir.</p> <p>7 Q. Now, you do know that this e-mail exchange is</p> <p>8 an e-mail exchange internal at Vinmar. Correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. You testified that there was a</p> <p>11 difference between origin and load port?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. That means two different things. Correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Now, if we look at the e-mail from</p> <p>18 Mr. Anaya to Mr. Wilson, he asked Mr. Wilson at the</p> <p>19 bottom of the page, "To complete the order, we need the</p> <p>20 port of origin." Correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Now, you don't know whether he meant the</p> <p>23 origin of the product or the port of loading, do you?</p> <p>24 A. I would assume he's talking about the origin</p> <p>25 of the product.</p>	<p style="text-align: right;">495</p> <p>1 Q. Well, I'm just asking your understanding in</p> <p>2 the industry. If you in a firm bid say, "This is what I</p> <p>3 want," and the firm offer on the other side doesn't</p> <p>4 match the firm bid precisely, then you don't have a</p> <p>5 deal, do you, sir?</p> <p>6 A. Probably wouldn't.</p> <p>7 Q. And the broker shouldn't put two parties</p> <p>8 together like that. Correct?</p> <p>9 A. He probably wouldn't.</p> <p>10 Q. Okay. And if he does, he exceeded his</p> <p>11 authority, did he not?</p> <p>12 A. He did.</p> <p>13 Q. Okay. It's possible -- you know brokers make</p> <p>14 mistakes. Right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. That's one of the reasons they put in their</p> <p>17 broker confirmation, "If anything in this confirmation</p> <p>18 is contrary to your understanding, please let me know"?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And, in fact, we know in this deal that</p> <p>21 Mr. Leyman made a mistake, at least one. Right?</p> <p>22 A. No.</p> <p>23 Q. Oh, we know he made at least one mistake,</p> <p>24 didn't he?</p> <p>25 A. No. He made two.</p>

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<p style="text-align: right;">496</p> <p>1 Q. Two?</p> <p>2 A. I think the -- whoever typed it up got it</p> <p>3 wrong.</p> <p>4 Q. Well, we know he made one mistake for sure.</p> <p>5 Correct?</p> <p>6 A. Which was?</p> <p>7 Q. He got the price wrong.</p> <p>8 A. Okay.</p> <p>9 Q. You know that. Right?</p> <p>10 A. Well, he corrected it, yes.</p> <p>11 Q. Okay. But when he originally wrote his notes,</p> <p>12 he got the price wrong. It was a -- it was a million</p> <p>13 dollar mistake?</p> <p>14 A. Okay.</p> <p>15 Q. Do you recall that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So, I mean, it happens that brokers</p> <p>18 make mistakes?</p> <p>19 A. Yes.</p> <p>20 Q. Do you -- did you believe that a broker has</p> <p>21 the responsibility to ensure that the parties have a</p> <p>22 clear understanding of what the terms are that he says</p> <p>23 they agreed to?</p> <p>24 A. Say that again, please.</p> <p>25 Q. Do you believe that a broker has a</p>	<p style="text-align: right;">498</p> <p>1 Q. Okay. And you've seen this before?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And is it your understanding that</p> <p>4 while there were some instant message exchanges on the</p> <p>5 morning of July 22nd between Mr. Leyman and Mr. Lockwood</p> <p>6 on one hand and Mr. Wilson or Dr. Wilson and Mr. Leyman</p> <p>7 on the other that ultimately the deal that Mr. Leyman</p> <p>8 claims he brokered was done over the phone?</p> <p>9 A. I believe he probably finalized it over the</p> <p>10 phone.</p> <p>11 Q. And you haven't seen --</p> <p>12 A. You don't see it in here.</p> <p>13 Q. That was my question. You don't see anywhere</p> <p>14 in these instant messages where Mr. Leyman has captured</p> <p>15 all of the terms of what he believes the deal was.</p> <p>16 Correct?</p> <p>17 A. No.</p> <p>18 Q. Okay. And you do know that mister -- or</p> <p>19 Dr. Wilson and Mr. Lockwood never spoke on July 22nd,</p> <p>20 2008?</p> <p>21 A. Correct. I never saw that in anything.</p> <p>22 Q. Now, was it -- is it your recollection that</p> <p>23 Mr. Leyman told Mr. Lockwood somewhere around</p> <p>24 12:00 o'clock in the afternoon or July 22nd that a deal</p> <p>25 had been completed?</p>
<p style="text-align: right;">497</p> <p>1 responsibility to ensure that the parties have a clear</p> <p>2 understanding of the terms that he believes they agreed</p> <p>3 to?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And do you have -- do you also think the</p> <p>6 broker has the responsibility to correct someone if they</p> <p>7 have a misunderstanding about the terms that he believes</p> <p>8 he's negotiated?</p> <p>9 A. I believe they do.</p> <p>10 Q. Okay. Is it -- is it your understanding of</p> <p>11 this transaction between Vinmar and Tricon that Tricon</p> <p>12 was not required to load this product from any specific</p> <p>13 location?</p> <p>14 A. Right.</p> <p>15 Q. So they could load it from wherever they</p> <p>16 wanted to. Correct?</p> <p>17 A. (Nods head)</p> <p>18 Q. Is that --</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Would you flip to Joint Exhibit No. 11,</p> <p>21 please, sir? And you've seen these documents. Correct?</p> <p>22 These -- this is the instant message exchange between</p> <p>23 Mr. Wilson and Mr. Leyman. The first page is the</p> <p>24 conversation on July 22nd, 2008. Correct?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">499</p> <p>1 A. I don't remember what the time was. I just</p> <p>2 remember there was a notation in the instant messages</p> <p>3 where he said "Deal done" or something like that.</p> <p>4 Q. Okay. Keep your finger on that. Just flip to</p> <p>5 the exhibit right in front of it, which is Joint Exhibit</p> <p>6 No. 10.</p> <p>7 A. Okay.</p> <p>8 Q. And this should be the instant messages</p> <p>9 between Mr. Lockwood and Mr. Leyman. Correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you've seen those before?</p> <p>12 A. Yes.</p> <p>13 Q. And if we go to the third page of exhibit --</p> <p>14 Joint Exhibit No. 10, which at the right-hand corner is</p> <p>15 MOAB 6.</p> <p>16 A. Yes, sir.</p> <p>17 Q. At 12:08:59 p.m. Mr. Leyman says, "Will be</p> <p>18 done calling." And then at 12:09:39 p.m. Mr. Leyman</p> <p>19 says to Mr. Lockwood, "All done but call me."</p> <p>20 Okay. Now, is it your understanding that</p> <p>21 at that point the transaction was concluded?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. And that transaction, as you understood it,</p> <p>24 did not require Tricon to load out of any specific</p> <p>25 location. Correct?</p>

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<p style="text-align: right;">500</p> <p>1 A. No, sir, it did not.</p> <p>2 Q. Joint 11 -- Joint Exhibit No. 11 then, as you</p> <p>3 said, are the e-mails -- or the instant messages between</p> <p>4 Dr. Wilson and Mr. Leyman. And at 12:57:20 p.m. -- so</p> <p>5 that's after Mr. Leyman has told Mr. Lockwood a deal is</p> <p>6 done. Correct?</p> <p>7 A. At 12:57. Okay.</p> <p>8 Q. You see that?</p> <p>9 And what Mr. Wilson asked at 12:57, he</p> <p>10 says, "Ed, given that Brad is selling out of U.S. Gulf</p> <p>11 Coast, am I getting 45 days from BL or 30, hopefully</p> <p>12 45." Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Now, you understand that the question that's</p> <p>15 being asked there is since the product is being loaded</p> <p>16 out of the U.S. Gulf Coast, can I have 45 days from the</p> <p>17 bill of lading to pay the invoice because it's going to</p> <p>18 take about that long to get over there? That's what</p> <p>19 that question means. Right?</p> <p>20 A. He's asking about changing the payment terms.</p> <p>21 Q. Correct. Because that's how long it's going</p> <p>22 to take to get from the U.S. Gulf Coast to Asia.</p> <p>23 A. It takes about 40, 45 days.</p> <p>24 Q. Right. And he would not want to pay the</p> <p>25 invoice until he could have a chance to sell the product</p>	<p style="text-align: right;">502</p> <p>1 different places just to see if this refreshes your</p> <p>2 memory or not. Joint Exhibit No. 7. So, Mr. Simpson, I</p> <p>3 think that's the -- not that one. That one, yes, sir,</p> <p>4 right there.</p> <p>5 A. This one?</p> <p>6 Q. Yes, sir.</p> <p>7 A. No. 7. Okay.</p> <p>8 Q. Here's some of the SAP data. Do you recall</p> <p>9 reviewing this information?</p> <p>10 A. I remember seeing it. Your copy is much</p> <p>11 better than mine.</p> <p>12 Q. Okay. I just -- I just want to know if you</p> <p>13 recalled seeing it or not.</p> <p>14 A. Yes, I -- yes, I saw it.</p> <p>15 Q. And that -- do those documents play any role</p> <p>16 in your opinion here today?</p> <p>17 A. No, they probably don't.</p> <p>18 Q. If Vinmar's documentations showed that they</p> <p>19 believed the country of origin was USA, would that have</p> <p>20 any bearing on your opinion as to what the deal terms</p> <p>21 were?</p> <p>22 A. Well, I know they believed they had that.</p> <p>23 Q. So that would be consistent with your</p> <p>24 understanding of Vinmar's position. Correct?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">501</p> <p>1 on the other end. And that would be the best case</p> <p>2 scenario?</p> <p>3 A. That's the best case scenario, yes.</p> <p>4 Q. Okay. Now, you don't see where Mr. Leyman</p> <p>5 corrected Rick Wilson's statement about selling out of</p> <p>6 the U.S. Gulf Coast, do you?</p> <p>7 A. No.</p> <p>8 Q. Okay. But that's not -- you didn't understand</p> <p>9 the deal to be a requirement that they sell out of the</p> <p>10 U.S. Gulf Coast. Right?</p> <p>11 A. Correct, I did not.</p> <p>12 Q. Did you -- I see in the -- in the documents</p> <p>13 that you obtained in this case or the documents that you</p> <p>14 reviewed that you did obtain and review copies of</p> <p>15 Vinmar's SAP data. Did you remember doing that? Take a</p> <p>16 look at --</p> <p>17 A. I'm not sure I did.</p> <p>18 Q. Okay. Well, it's in the -- it's in the</p> <p>19 statement. In your report, there's a series of</p> <p>20 documents reviewed and that would include the documents</p> <p>21 containing Vinmar's SAP computer-generated data. Do you</p> <p>22 remember looking at that?</p> <p>23 A. I probably did. You might have to refresh my</p> <p>24 memory.</p> <p>25 Q. Okay. Well, one -- we can look at a couple of</p>	<p style="text-align: right;">503</p> <p>1 Q. You said that you had never signed a contract</p> <p>2 on a spot deal. Is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. But you have signed what you call long-term</p> <p>5 deals, something that's a year or longer?</p> <p>6 A. Usually a year or longer.</p> <p>7 Q. Can -- but you do know that you've seen a lot</p> <p>8 of different terms and conditions and paper in the</p> <p>9 industry. Most of those contain signature blanks.</p> <p>10 Correct?</p> <p>11 A. I'll say most of the aromatics don't.</p> <p>12 Q. They don't contain signature blanks?</p> <p>13 A. Not that I -- most of them.</p> <p>14 Q. Right.</p> <p>15 A. The definition of most of them is probably the</p> <p>16 tough part.</p> <p>17 Q. Okay. More than three --</p> <p>18 A. I would say the majority of them do not</p> <p>19 contain signature blanks. I can just tell you Valero's</p> <p>20 never did.</p> <p>21 Q. Valero's never even had a place for somebody</p> <p>22 to sign. Correct?</p> <p>23 A. No, sir.</p> <p>24 Q. You said that if there was a mistake in a</p> <p>25 trade and somebody became aware of it that it wouldn't</p>

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<p style="text-align: right;">504</p> <p>1 take them -- it wouldn't take an ops person more than 30</p> <p>2 seconds to get ahold of a trader?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Now, that of course is assuming that</p> <p>5 the trader is available. Right?</p> <p>6 A. Assuming they're available. They're going to</p> <p>7 try to find out where they are if they're not there. If</p> <p>8 it's in the middle of the night, they'll try to do that.</p> <p>9 They'll get ahold of him as soon as possible.</p> <p>10 Q. Right. They'll get ahold of him as soon as</p> <p>11 possible?</p> <p>12 A. And it's usually immediately.</p> <p>13 Q. And if the trader is not available, then as</p> <p>14 soon as possible may take some time. Right?</p> <p>15 A. It could.</p> <p>16 Q. So is it your opinion that the -- you</p> <p>17 testified that you believe that a deal had been done. I</p> <p>18 just want to make sure I understand. It's your opinion</p> <p>19 that a deal was done on July 22nd, 2008?</p> <p>20 A. Yes, I believe that's the date.</p> <p>21 Q. And did -- you reviewed the broker</p> <p>22 confirmation, which was Joint Exhibit No. 4. Correct?</p> <p>23 A. Yes.</p> <p>24 Q. And is it your understanding that that</p> <p>25 document -- did that document accurately reflect the</p>	<p style="text-align: right;">506</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And you've actually told us this</p> <p>3 afternoon that you've done deals where there was no</p> <p>4 paper other than this confirmation because people didn't</p> <p>5 agree?</p> <p>6 A. They didn't agree upon general terms and</p> <p>7 conditions.</p> <p>8 Q. Right. So there was no other paper than this</p> <p>9 confirmation?</p> <p>10 A. What I'm trying to say is I will do a deal.</p> <p>11 You've got to get it in a con -- and I'm using Valero.</p> <p>12 You have to get in the contract system so you have to</p> <p>13 send something down there that gets it in the system and</p> <p>14 then that releases the barrels for the refineries or the</p> <p>15 terminal or whoever to release the barrels.</p> <p>16 So something came through, but we didn't</p> <p>17 pass paper. We didn't get paper from each party. We</p> <p>18 might not have got paper from a broker if you're using a</p> <p>19 broker.</p> <p>20 Q. Okay. So there are a variety of different</p> <p>21 ways that a deal may be done and ultimately performed?</p> <p>22 A. Right.</p> <p>23 Q. It's your opinion that a broker earns his</p> <p>24 commission when he concludes a deal. Correct?</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">505</p> <p>1 agreement as you understand it?</p> <p>2 A. That's what I understood.</p> <p>3 Q. Is it your understanding that all of the terms</p> <p>4 that were included in Joint Exhibit No. 4 had been</p> <p>5 discussed and agreed to by the parties?</p> <p>6 A. By both parties?</p> <p>7 Q. Yes, sir.</p> <p>8 A. Yes. That's what was in Ed Leyman's</p> <p>9 deposition. Do you remember if origin was included? He</p> <p>10 said it wasn't.</p> <p>11 Q. Okay. But my -- I guess my question was a</p> <p>12 little different. I just want to --</p> <p>13 A. Okay.</p> <p>14 Q. -- make sure I understand. The document,</p> <p>15 Joint Exhibit No. 4, it's your opinion that that</p> <p>16 document included all the terms that the parties had</p> <p>17 agreed to?</p> <p>18 A. Well, there's other terms and conditions that</p> <p>19 they agreed to later, yes.</p> <p>20 Q. Well, but is this document --</p> <p>21 A. The pertinent ones. The pertinent ones --</p> <p>22 Q. And you've --</p> <p>23 A. -- that conclude a deal. In my mind that</p> <p>24 conclude a deal.</p> <p>25 Q. Right here, Joint Exhibit No. 4?</p>	<p style="text-align: right;">507</p> <p>1 Q. When he -- when he puts a firm bid with a firm</p> <p>2 offer, the broker has earned his commission?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And he should be paid for that commission.</p> <p>5 Correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did you know that Tricon had been sent a</p> <p>8 commission invoice by MOAB?</p> <p>9 A. No.</p> <p>10 Q. Did you know they didn't pay it?</p> <p>11 A. No.</p> <p>12 Q. They don't have any intent of paying it?</p> <p>13 MR. DIAZ-ARRASTIA: I object that that</p> <p>14 clearly mistakes Mr. Lockwood's testimony.</p> <p>15 MR. LEE: I'm sorry. Let me --</p> <p>16 JUDGE BENTON: It's overruled. The panel</p> <p>17 remembers the testimony.</p> <p>18 Q. (BY MR. LEE) Tricon has postponed --</p> <p>19 MR. DIAZ-ARRASTIA: I don't think it</p> <p>20 misleads the witness.</p> <p>21 MR. LEE: And I'll withdraw the question</p> <p>22 and I'll ask it again.</p> <p>23 Q. (BY MR. LEE) The testimony was that the</p> <p>24 payment of the invoice has been postponed?</p> <p>25 A. I didn't --</p>

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<p style="text-align: right;">508</p> <p>1 Q. Are you aware of that?</p> <p>2 A. No, I didn't know that.</p> <p>3 Q. Do you see anything in the broker confirmation</p> <p>4 or have you seen any documents in this case that</p> <p>5 would -- that state an agreement between MOAB and Tricon</p> <p>6 that Tricon has the right to postpone paying the</p> <p>7 commission until somebody performs?</p> <p>8 A. It doesn't say it in the agreement, no.</p> <p>9 Q. Did -- were you aware that Mr. Leyman did not</p> <p>10 send a commission invoice to Vinmar?</p> <p>11 A. No, sir.</p> <p>12 Q. Wouldn't that be a comment on what he thought</p> <p>13 about whether the deal was final or not?</p> <p>14 A. I can't say what he thought -- what he thought</p> <p>15 about sending out an invoice or not.</p> <p>16 MR. LEE: I'll pass the witness.</p> <p>17 JUDGE BENTON: Anything else,</p> <p>18 Mr. Diaz-Arrastia?</p> <p>19 MR. DIAZ-ARRASTIA: I have just a couple</p> <p>20 of questions.</p> <p>21 REDIRECT EXAMINATION (2:58 p.m.)</p> <p>22 BY MR. DIAZ-ARRASTIA:</p> <p>23 Q. Mr. Simpson, Mr. Lee asked you a little bit</p> <p>24 about, you know, the scheduler or ops specialist trying</p> <p>25 to get ahold of his trader --</p>	<p style="text-align: right;">510</p> <p>1 JUDGE DAVIDSON: One second. We need to</p> <p>2 take a break.</p> <p>3 JUDGE BENTON: We'll just take a -- let's</p> <p>4 just take a ten-minute break here.</p> <p>5 MR. DIAZ-ARRASTIA: Okay.</p> <p>6 (Recess from 3:00 p.m. to 3:16 p.m.)</p> <p>7 JUDGE BENTON: We're back on the record.</p> <p>8 We'll break this evening about 4:45, 4:50 at the latest.</p> <p>9 Okay?</p> <p>10 MR. DIAZ-ARRASTIA: Okay.</p> <p>11 JUDGE BENTON: All right. With that, you</p> <p>12 were in the middle of a question, I believe.</p> <p>13 MR. DIAZ-ARRASTIA: Yes, I was.</p> <p>14 JUDGE BENTON: You may proceed.</p> <p>15 Q. (BY MR. DIAZ-ARRASTIA) And let me get back to</p> <p>16 that. Okay. Mr. Simpson, I was calling your attention</p> <p>17 to Joint Exhibit 11 and the entry at 12:57:20 where</p> <p>18 Mr. Wilson says, "Ed, given Brad is selling out of USG,</p> <p>19 am I getting 45 days from BL or 30?"</p> <p>20 I think the question that I was asking you</p> <p>21 at the very moment that we broke was whether you had an</p> <p>22 opportunity to review Mr. Lockwood's deposition in this</p> <p>23 case.</p> <p>24 A. Yes.</p> <p>25 Q. And is it your understanding that</p>
<p style="text-align: right;">509</p> <p>1 A. Yes.</p> <p>2 Q. -- and what happens if the trader is not</p> <p>3 available.</p> <p>4 How long does it take to send an e-mail to</p> <p>5 your trader?</p> <p>6 A. Ten seconds, 15 seconds.</p> <p>7 Q. Okay. Now, let's take a look at Joint</p> <p>8 Exhibit 11, those IM's that Mr. Lee was questioning you</p> <p>9 about.</p> <p>10 A. No. 11, Joint Exhibit?</p> <p>11 Q. Joint Exhibit No. 11, and in particular the</p> <p>12 line at 12:57:20 where Mr. Wilson is saying, "Given Brad</p> <p>13 is selling out of USG."</p> <p>14 A. I'm not there.</p> <p>15 Q. 12:57:20.</p> <p>16 A. Okay.</p> <p>17 Q. Have you found it?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember that Mr. Lee questioned you</p> <p>20 about that for a little while?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Now, you have also read Mr. Lockwood's</p> <p>23 deposition in this case, have you not, sir?</p> <p>24 A. Yes.</p> <p>25 Q. And is it your understanding that after --</p>	<p style="text-align: right;">511</p> <p>1 Mr. Lockwood's testimony has been that after the deal</p> <p>2 was made Mr. Leyman asked him where he was likely to get</p> <p>3 his supply, and that his response was, "Most likely from</p> <p>4 the U.S. Gulf."</p> <p>5 A. Yes.</p> <p>6 Q. So that is very consistent with what statement</p> <p>7 that Mr. Lockwood made, "Most likely U.S. Gulf"?</p> <p>8 A. Yes, sir.</p> <p>9 Q. But as I think we established a moment ago, is</p> <p>10 mostly likely U.S. Gulf a guarantee of U.S. origin?</p> <p>11 A. No, sir.</p> <p>12 Q. And anyone who is experienced in the industry</p> <p>13 would understand that?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Let me ask you another thing, sir. We talked</p> <p>16 a little bit about -- I can't remember what the exhibit</p> <p>17 number was. It was that e-mail between Mr. Anaya and</p> <p>18 Mr. Wilson.</p> <p>19 I'll tell you what. We'll just look at</p> <p>20 J 11. We don't have to see it, but I just want to ask</p> <p>21 you this question, sir. In your opinion as someone who</p> <p>22 has been, what, more than 20 years in the industry and</p> <p>23 been an active trader, would someone with experience in</p> <p>24 the petrochemical industry -- in the petrochemical</p> <p>25 trading industry use the word "origin" when they really</p>

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<p style="text-align: right;">512</p> <p>1 meant load port?</p> <p>2 A. No, sir.</p> <p>3 MR. DIAZ-ARRASTIA: I pass the witness.</p> <p>4 JUDGE BENTON: Mr. Lee?</p> <p>5 MR. LEE: Just a couple of quick</p> <p>6 questions.</p> <p>7 RECROSS-EXAMINATION (3:18 p.m.)</p> <p>8 BY MR. LEE:</p> <p>9 Q. Did you read Dr. Wilson's testimony on that</p> <p>10 e-mail?</p> <p>11 A. Yes, sir.</p> <p>12 Q. You know what he said about it. Right?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And he said he was answering the question</p> <p>15 about the port of load. Correct?</p> <p>16 A. I understood that.</p> <p>17 Q. You just don't believe that he -- that that's</p> <p>18 really what he meant?</p> <p>19 A. No. I was just reading what he said.</p> <p>20 Q. Okay. That's your interpretation of what he</p> <p>21 meant --</p> <p>22 A. That's my interpretation.</p> <p>23 Q. We have his testimony as to what he meant when</p> <p>24 he wrote it. Correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">514</p> <p>1 MR. LEE: I'll pass the witness.</p> <p>2 (The time is 3:19 p.m.)</p> <p>3 JUDGE BENTON: Mr. Diaz-Arrastia?</p> <p>4 MR. DIAZ-ARRASTIA: Nothing further.</p> <p>5 JUDGE BENTON: Call your next witness.</p> <p>6 MR. DIAZ-ARRASTIA: May he be excused?</p> <p>7 JUDGE BENTON: Yeah, you may be excused,</p> <p>8 sir.</p> <p>9 MR. SIMPSON: Okay. Thanks.</p> <p>10 MR. DIAZ-ARRASTIA: Mr. Lee and I were</p> <p>11 talking during the break about the manner of proceeding</p> <p>12 with the rest of the case, and this is what we would</p> <p>13 like to do.</p> <p>14 My next witness was going to be Chuck</p> <p>15 Matthews who's our -- the person who calculated our</p> <p>16 damages for us. He has submitted a report which you</p> <p>17 have seen in advance and it is also in the exhibit book</p> <p>18 that's Tricon Exhibit -- I think it's 39. Is it 39?</p> <p>19 Yes, Tricon Exhibit 39 with a couple of</p> <p>20 additions. His CV is Tricon Exhibit 40. And very</p> <p>21 quickly the -- and there is also some -- there it is.</p> <p>22 There is some information that he relied on to make one</p> <p>23 of his schedules, information that he had taken from</p> <p>24 Platts, which is Tricon Exhibit 33, and that's what</p> <p>25 backs up one of the schedules in his report.</p>
<p style="text-align: right;">513</p> <p>1 Q. A couple of quick questions. Joint Exhibit</p> <p>2 No. 10, which are these instant messages between</p> <p>3 Mr. Lockwood and Mr. Leyman, if you'll go to MOAB 12,</p> <p>4 which is July 31, 2008.</p> <p>5 A. Okay.</p> <p>6 Q. Did you investigate why Tricon was in the</p> <p>7 market to buy mixed xylenes on July 31st, 2008?</p> <p>8 A. No.</p> <p>9 Q. Okay. But did you know that they were in the</p> <p>10 market to buy mixed xylenes on July 31st?</p> <p>11 A. From this, yes.</p> <p>12 Q. Okay. And what Mr. Lockwood had suggested to</p> <p>13 Mr. Leyman on July 31, 2008, is maybe you can work a</p> <p>14 cheap book out for me with Vinmar. Right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. In other words, do a paper transaction.</p> <p>17 Correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Trading companies don't make the product.</p> <p>20 Right?</p> <p>21 A. No, sir.</p> <p>22 Q. So like Tricon doesn't make mixed xylenes?</p> <p>23 A. Correct.</p> <p>24 Q. They have to buy it to deliver it. Correct?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">515</p> <p>1 We have agreed that for our damages</p> <p>2 evidence we would submit the report and Mr. Matthews</p> <p>3 will not testify live. All that I would do would be</p> <p>4 have him walk the panel through the report and we can</p> <p>5 get the panel to read it, and Mr. Lee is in agreement</p> <p>6 with that.</p> <p>7 JUDGE BENTON: Let's see. Judge Woods</p> <p>8 probably graduated with an economics, I'm a CPA and</p> <p>9 Judge Davis knows everything.</p> <p>10 JUDGE DAVIDSON: I was -- I was a math</p> <p>11 major.</p> <p>12 MR. DIAZ-ARRASTIA: I'm sure you could</p> <p>13 handle it very well.</p> <p>14 MR. LEE: And just to be clear, obviously</p> <p>15 we don't agree with the report, but we -- I agree that</p> <p>16 that's what he would testify to. And I think rather</p> <p>17 than spending an hour having him do that that we might</p> <p>18 be able to speed this up.</p> <p>19 MR. DIAZ-ARRASTIA: The --</p> <p>20 JUDGE WOOD: And so, therefore, your</p> <p>21 closing -- I'm sorry.</p> <p>22 MR. DIAZ-ARRASTIA: Well, not --</p> <p>23 JUDGE WOOD: If I could ask a question.</p> <p>24 Therefore, your closing remarks are you would sum up</p> <p>25 with how you interpret his report and we would hear from</p>

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<p style="text-align: right;">516</p> <p>1 Mr. Lee as to his comments?</p> <p>2 MR. DIAZ-ARRASTIA: I suppose we could</p> <p>3 both do that.</p> <p>4 JUDGE WOOD: Thank you.</p> <p>5 MR. DIAZ-ARRASTIA: The other evidence</p> <p>6 that I would have to present is we do have a claim for</p> <p>7 attorneys' fees. We had an agreement before the hearing</p> <p>8 that the attorneys' fee evidence would be submitted in</p> <p>9 writing.</p> <p>10 The panel already has a copy of my</p> <p>11 attorneys' fee invoices in this matter through the month</p> <p>12 of August. I will prepare a report updating it through</p> <p>13 the end of the hearing and going into perhaps any</p> <p>14 enforcement proceedings.</p> <p>15 We talked about dates during the break.</p> <p>16 Mr. Lee is going to be out of town next week so I think</p> <p>17 where we ended up is that I would prepare -- present the</p> <p>18 report to the panel by August the 30th and he would --</p> <p>19 I'm sorry, September the 30th, and he would give</p> <p>20 whatever response in writing by the 8th of October, if</p> <p>21 that's okay with the panel.</p> <p>22 JUDGE BENTON: The 8th of what?</p> <p>23 MR. DIAZ-ARRASTIA: October.</p> <p>24 JUDGE BENTON: Well, let me ask you a</p> <p>25 question. We have not yet talked about closing</p>	<p style="text-align: right;">518</p> <p>1 into that, the final bit of evidence would be in our</p> <p>2 cause we have also agreed the deposition of Mr. Gary</p> <p>3 Cofran, who is Vinmar's expert, would be submitted in</p> <p>4 evidence in its entirety. However, I would -- I have</p> <p>5 maybe about ten minutes of some sections that I would</p> <p>6 like to read to the panel to highlight them.</p> <p>7 Once I do that, my case would rest. And I</p> <p>8 think that Mr. Lee then has Mr. Pascu who will testify.</p> <p>9 And I think then we would be done with the evidence.</p> <p>10 JUDGE DAVIDSON: Okay. I just want to</p> <p>11 make sure -- well, two things. First of all, some of</p> <p>12 how we proceed depends upon whether y'all wanted a</p> <p>13 reasoned ruling or a ruling and -- you know, and we</p> <p>14 asked y'all to let us know by the time you close and I</p> <p>15 haven't -- I haven't heard an answer yet.</p> <p>16 MR. DIAZ-ARRASTIA: No. I don't think we</p> <p>17 have given you one.</p> <p>18 JUDGE BENTON: Yeah, but that's okay</p> <p>19 because the record --</p> <p>20 MR. DIAZ-ARRASTIA: We have not discussed</p> <p>21 that.</p> <p>22 MR. LEE: We haven't huddled on that.</p> <p>23 JUDGE BENTON: But that's okay because for</p> <p>24 Triple A rules the record will not be closed until we</p> <p>25 get the last piece of paper there -- that is due us,</p>
<p style="text-align: right;">517</p> <p>1 arguments. Do you contemplate making closing arguments</p> <p>2 orally or do you prefer to make them in writing?</p> <p>3 MR. DIAZ-ARRASTIA: Well, I have a closing</p> <p>4 argument prepared, but we also discussed that and we</p> <p>5 decided to ask you what you would want to hear since</p> <p>6 you're the ones who matter.</p> <p>7 JUDGE WOOD: Let's hear from Mr. Lee.</p> <p>8 MR. LEE: Well, I would -- there's a</p> <p>9 couple of things on that. I certainly think that it</p> <p>10 would be beneficial to the panel if we presented some</p> <p>11 briefing on some of the legal issues, particularly the</p> <p>12 damages, if that's informative to the panel.</p> <p>13 And so whether -- I'd like to make a</p> <p>14 closing argument, but if you don't find that useful we</p> <p>15 can do it in the legal submissions.</p> <p>16 JUDGE BENTON: Well, you know what? Just</p> <p>17 one second. I have on each day we've been here talked</p> <p>18 to the court reporter and I am informed that -- my</p> <p>19 understanding is that you are going to get the record</p> <p>20 from the court reporter in the normal course of events</p> <p>21 once the evidence kindly closes.</p> <p>22 If it would help you to have the evidence</p> <p>23 to prepare closing and writing me, that might help, but</p> <p>24 give us a second to huddle. Why don't we take --</p> <p>25 MR. DIAZ-ARRASTIA: One -- before we go</p>	<p style="text-align: right;">519</p> <p>1 whether that be the briefing or whatever it is.</p> <p>2 So, I mean, if we leave here today or</p> <p>3 tomorrow, that doesn't start the clock running.</p> <p>4 JUDGE DAVIDSON: I know that. As long as</p> <p>5 y'all know that the effect of --</p> <p>6 MR. DIAZ-ARRASTIA: I understand a</p> <p>7 reasoned ruling takes more work.</p> <p>8 JUDGE DAVIDSON: Yes.</p> <p>9 MR. DIAZ-ARRASTIA: A lot more work.</p> <p>10 JUDGE DAVIDSON: Perhaps.</p> <p>11 MR. DIAZ-ARRASTIA: Perhaps.</p> <p>12 MR. LEE: I certainly appreciate that.</p> <p>13 We'll -- let us talk about that.</p> <p>14 JUDGE DAVIDSON: Okay. We're going to go</p> <p>15 huddle. You're going to talk about that.</p> <p>16 MR. LEE: Can I make one other suggestion?</p> <p>17 JUDGE DAVIDSON: Sure.</p> <p>18 MR. LEE: I have done a couple of</p> <p>19 arbitrations where we have finished the evidence, gotten</p> <p>20 the record, submitted briefing and then had a closing</p> <p>21 argument, both evidentiary and legal, and answered</p> <p>22 whatever questions the panel have. We certainly could</p> <p>23 do that if you wanted to. It just depends on what the</p> <p>24 panel wants.</p> <p>25 MR. DIAZ-ARRASTIA: Fine.</p>

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<p style="text-align: right;">520</p> <p>1 MR. LEE: I'm prepared to do a closing 2 or -- 3 JUDGE BENTON: Okay. Give us three 4 minutes. And we're off the record, of course. 5 (Recess from 3:26 p.m. to 3:35 p.m.) 6 JUDGE BENTON: We're back on the record. 7 Let's see here. What are you giving us on 8 the 30th? 9 MR. DIAZ-ARRASTIA: What I would give you 10 on the 30th is a report on my attorneys' fees. 11 JUDGE BENTON: Okay. 12 MR. DIAZ-ARRASTIA: And as I said, you 13 already have in Tricon Exhibit 37 all my bills in this 14 case through -- 15 MS. LARSON: 37 and 38. 16 MR. DIAZ-ARRASTIA: Oh, 37 and 38. I'm 17 sorry. 18 JUDGE BENTON: Okay. 19 MR. DIAZ-ARRASTIA: You have all of those 20 through actually -- 21 JUDGE BENTON: Well, yeah. I -- 22 MR. DIAZ-ARRASTIA: We'd need to update 23 it, of course. 24 JUDGE BENTON: You've given me more than I 25 need --</p>	<p style="text-align: right;">522</p> <p>1 MR. DIAZ-ARRASTIA: At the same time. 2 Well, keeping in mind that he will be out of town next 3 week, I would like to accommodate that as well. 4 JUDGE BENTON: That's right. I forgot 5 about that. Through the 8th. Right? 6 MR. LEE: Well, it's out next week. I do 7 have the some depositions the first part of -- I mean, 8 ideally if that's the idea maybe on the -- would we do 9 the 15th of October? 10 JUDGE BENTON: Submit them on the 15th? 11 MR. LEE: Yes. 12 JUDGE WOOD: What day would -- what day 13 would y'all anticipate doing the closing arguments? 14 JUDGE BENTON: Well, hold on a second. 15 Let's take their papers first. This is what we're 16 addressing. 17 MR. LEE: We're both going to file. 18 MR. DIAZ-ARRASTIA: The 15th is 19 acceptable -- 20 JUDGE BENTON: Okay. 21 MR. DIAZ-ARRASTIA: -- to me. I mean, I 22 think I could do it a few days sooner, but if Steve 23 needs that long that's fine with me. 24 MR. LEE: Yeah. Unfortunately I am -- 25 JUDGE DAVIDSON: No. And I can understand</p>
<p style="text-align: right;">521</p> <p>1 MR. DIAZ-ARRASTIA: Right. 2 JUDGE BENTON: -- by my question. 3 MR. DIAZ-ARRASTIA: Okay. That's what I 4 would do by the 30th. 5 JUDGE BENTON: Okay. If it was our desire 6 to accommodate what Mr. Lee suggests, and that is get 7 some post evidentiary briefing and thereafter have oral 8 argument, would you be able to provide us with your side 9 of the closing briefing on the 30th also? If not -- 10 MR. DIAZ-ARRASTIA: Well, we were just 11 talking with the reporter and she can get us -- it will 12 take her about a week to have the record transcribed and 13 I would like -- I think ideally what you would like is 14 if you have a written closing, I'd like us to be able to 15 make record references. So we're probably not going to 16 be getting the record until just a day or two before the 17 30th. 18 JUDGE BENTON: Okay. So what date would 19 work for you? 20 MR. DIAZ-ARRASTIA: Let me look at my 21 calendar. 22 And is it -- would you contemplate that 23 both sides would file their close at the same time or 24 that I would go first and then he would go second? 25 JUDGE BENTON: At the same time.</p>	<p style="text-align: right;">523</p> <p>1 that. 2 JUDGE BENTON: Okay. Hold on a second. 3 There's no need to apologize. So I think we're firm 4 then October 15 we'll submit the paper closing briefing 5 or brief closing. 6 All right. Now, given that, what date 7 works for you to do -- 8 MR. DIAZ-ARRASTIA: Oral argument? 9 JUDGE BENTON: -- oral argument? 10 And let me just say right up front the 11 week of the 18th is probably not a good week for some of 12 us up here. 13 MR. DIAZ-ARRASTIA: Okay. I think the 14 primary consideration in that should be how long you-all 15 think you'll need to read everything? 16 JUDGE WOOD: We'll have -- we're going to 17 read. 18 JUDGE BENTON: If we're going to get it on 19 the 15th and we'll have it read the week of the 18th, 20 there's no doubt. 21 JUDGE DAVIDSON: How about the 25th, a 22 Monday? 23 JUDGE WOOD: 25th? 24 MR. DIAZ-ARRASTIA: 25th will work. 25 JUDGE BENTON: Mr. Lee?</p>

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<p style="text-align: right;">524</p> <p>1 MR. LEE: That's fine with me. I would 2 suggest -- I will offer it. We have a conference room 3 in our office that has sort of a little round table and 4 a place to argue, but if everybody's -- George, if 5 you're comfortable doing it there -- 6 MR. DIAZ-ARRASTIA: I am perfectly 7 comfortable going to your office. 8 MR. LEE: Okay. So we'll be happy to host 9 that and give you all day in the conference room if you 10 wanted to work after we leave so... 11 JUDGE BENTON: Okay. So Monday, the 25th. 12 Let's just say 9:00 a.m. Does that work for you, Judge 13 Wood? 14 JUDGE WOOD: Yes. 15 JUDGE BENTON: Judge Davidson? 16 JUDGE DAVIDSON: Monday, the 25th. 17 JUDGE BENTON: 9:00 a.m. Okay. So -- all 18 right. With that, back to you, Mr. Diaz-Arrastia. 19 JUDGE WOOD: Two minutes. Let me whisper 20 in his ear. 21 JUDGE BENTON: Okay. Mr. Diaz-Arrastia, I 22 will give it back to you -- I'm sorry. Mr. Lee is 23 rising. 24 MR. LEE: I'm sorry. May I make one more 25 comment? I think the agreement we have on agreement</p>	<p style="text-align: right;">526</p> <p>1 Tricon -- I mean, obviously you understand where we are 2 on the jurisdictional issue and so -- 3 JUDGE WOOD: I think under the rules if 4 one side requests it you get it so that's why we wanted 5 to know if anybody was going to request it. 6 JUDGE BENTON: Right. 7 MR. DIAZ-ARRASTIA: Well, I will request 8 it right now. 9 JUDGE WOOD: Got it. 10 JUDGE DAVIDSON: Easy. 11 JUDGE BENTON: All right. That takes care 12 of the scheduling stuff. 13 So do you have more evidence to put on? 14 MR. DIAZ-ARRASTIA: The other evidence to 15 put on, we are going to -- do we have copies? Let's go 16 get -- the agreement that we have made is that the 17 deposition of Mr. Gary Cofran, who is Vinmar's expert, 18 will be submitted in its entirety. 19 However, there are some excerpts from it. 20 And this deposition was not video'd, but there's some 21 experts -- excerpts from it that I would like to read to 22 the panel now. And if Ms. Larson would play the role of 23 Mr. Cofran, we can do that now. I think it will be 24 about ten minutes. 25 JUDGE DAVIDSON: Okay.</p>
<p style="text-align: right;">525</p> <p>1 fees is that Tricon would submit -- 2 JUDGE BENTON: Theirs first. 3 MR. LEE: -- theirs on the -- 4 JUDGE BENTON: 30th. 5 MR. LEE: -- 30th. And then we would file 6 response on October the 8th. 7 JUDGE BENTON: Right. 8 MR. LEE: Okay. So just on the attorneys' 9 fee issue as to what the amount is. And obviously we 10 don't agree that they're entitled to attorneys' fees, 11 but if we're going to submit counter -- 12 JUDGE BENTON: Okay. 13 JUDGE WOOD: And do we want to have a time 14 that y'all let us know what kind of ruling you want? 15 Would that be a deadline that y'all can agree on -- 16 MR. DIAZ-ARRASTIA: Well, I would -- 17 JUDGE WOOD: -- or is that just -- 18 MR. DIAZ-ARRASTIA: We've -- maybe we've 19 decided. We've decided on our side that we would like a 20 reasoned decision. 21 JUDGE WOOD: If somebody requests us do 22 it, we need to do it. 23 MR. DIAZ-ARRASTIA: And I think Mr. Lee 24 has indicated that he's okay with that. 25 MR. LEE: Right. I think that it's</p>	<p style="text-align: right;">527</p> <p>1 MR. LEE: And if I could make just one 2 comment. I have not been provided with the designation 3 so I think rather than trying to shuffle through and 4 figure out optional completeness, I will submit whatever 5 we need to submit in a brief -- in our closing brief. 6 JUDGE DAVIDSON: I just sort of thought it 7 was going to be -- that we could consider it in its 8 entirety. 9 JUDGE BENTON: Yeah. 10 MR. DIAZ-ARRASTIA: Well, you can consider 11 it in its entirety, but there are some parts that I want 12 to emphasize. 13 JUDGE DAVIDSON: Fine. In other words, I 14 will read this entire deposition. I will give all 15 panels -- all portions of this deposition equal weight. 16 How does that sound? 17 JUDGE WOOD: That's what I show as the 18 Rule 11 agreement. 19 MR. DIAZ-ARRASTIA: Correct. That is 20 correct. 21 JUDGE DAVIDSON: I see his -- 22 JUDGE WOOD: My question is, how are we 23 going to get a copy of this to the court reporter? Now, 24 make sure that she gets a copy. 25 MR. DIAZ-ARRASTIA: We will make sure that</p>

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<p style="text-align: right;">528</p> <p>1 she -- that she gets a copy.</p> <p>2 MS. LARSON: I've got a copy right now.</p> <p>3 MR. DIAZ-ARRASTIA: Yeah. And, like I</p> <p>4 said, it was like this -- frankly, yesterday evening, I</p> <p>5 still really believed that he was going to be called,</p> <p>6 but that has changed.</p> <p>7 Why don't you get your part and we will</p> <p>8 read it.</p> <p>9 MR. LOCKWOOD: Do you want her to sit over</p> <p>10 there?</p> <p>11 MR. DIAZ-ARRASTIA: Yes. Why don't you</p> <p>12 sit on the stand to make it easier?</p> <p>13 JUDGE BENTON: All right,</p> <p>14 Mr. Diaz-Arrastia.</p> <p>15 MR. DIAZ-ARRASTIA: We are -- we are going</p> <p>16 to start on Page 5, Line 12 through Line 21.</p> <p>17 MS. LARSON: They have it.</p> <p>18 MR. DIAZ-ARRASTIA: Oh, okay. I will -- I</p> <p>19 will read it out loud so the panel can follow along. So</p> <p>20 Page 5, Lines 12 through 21.</p> <p>21 (At this time excerpts of the transcript</p> <p>22 of the deposition of Gary Cofran that was taken on</p> <p>23 September 16, 2010, were read into the record. The</p> <p>24 questions were read by Mr. Diaz-Arrastia. The answers</p> <p>25 were read by Ms. Larson.)</p>	<p style="text-align: right;">530</p> <p>1 reading. Let's --</p> <p>2 MR. DIAZ-ARRASTIA: Page 23, Line 7</p> <p>3 through 13.</p> <p>4 Are we ready?</p> <p>5 Q. (BY MR. DIAZ-ARRASTIA) Okay. When -- who --</p> <p>6 back when you were doing trades, would you have</p> <p>7 considered the -- who would you have considered the</p> <p>8 leading brokers in the U.S. dealing in aromatics?</p> <p>9 A. There was a two or three-man brokerage company</p> <p>10 out of New York. They at one time went by the name of</p> <p>11 InterCapital, if I remember correctly. There was Ed</p> <p>12 Leyman's company.</p> <p>13 MR. DIAZ-ARRASTIA: Next we are on</p> <p>14 Page 39, Line 14 through Page 40, Line 1.</p> <p>15 Now, are we ready?</p> <p>16 Q. (BY MR. DIAZ-ARRASTIA) Okay. Fair enough.</p> <p>17 If you're making a firm bid, what you put -- what you</p> <p>18 state in your firm bid are the things that you want.</p> <p>19 Would that be correct?</p> <p>20 A. Yes.</p> <p>21 Q. And, similarly, when you make a firm offer,</p> <p>22 what you include in your firm offer are the things that</p> <p>23 you're able to do, correct, or that you're committed to</p> <p>24 do let's say?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">529</p> <p>1 GARY COFRAN,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. DIAZ-ARRASTIA:</p> <p>5 Q. Good afternoon, Mr. Cofran.</p> <p>6 A. Good afternoon.</p> <p>7 Q. My name is George Diaz-Arrastia. I am one of</p> <p>8 the attorneys for Tricon in this case. I guess let's</p> <p>9 get right in. First, could you state your full name for</p> <p>10 the record?</p> <p>11 A. It's Gary Cofran.</p> <p>12 Q. Okay. And have you been hired by Vinmar in</p> <p>13 this case to be an expert witness?</p> <p>14 A. Yes.</p> <p>15 MR. DIAZ-ARRASTIA: Next is on Page 23,</p> <p>16 Lines 7 through 13.</p> <p>17 Q. (BY MR. DIAZ-ARRASTIA) Okay. When -- who --</p> <p>18 back when you were --</p> <p>19 JUDGE WOOD: Just a minute.</p> <p>20 Q. (BY MR. DIAZ-ARRASTIA) -- doing trades --</p> <p>21 JUDGE WOOD: Just a minute. Let Mr. Lee</p> <p>22 get to that spot.</p> <p>23 MR. DIAZ-ARRASTIA: Oh, I'm sorry.</p> <p>24 JUDGE WOOD: That's okay. We're just</p> <p>25 making sure everybody gets to the spot before we start</p>	<p style="text-align: right;">531</p> <p>1 Q. When a trader tells a broker that he is giving</p> <p>2 a firm bid, does that mean the broker has authority to</p> <p>3 go take that firm bid to the sellers?</p> <p>4 A. Yes.</p> <p>5 MR. DIAZ-ARRASTIA: Now, on 40 --</p> <p>6 MR. LEE: Well, I would -- I can't help</p> <p>7 myself. I would like to offer one piece as optional</p> <p>8 completeness, and that would be at Page 40, Line 7</p> <p>9 through Line 10, where the question was, "And when the</p> <p>10 terms of a firm bid meet the terms of a firm offer,</p> <p>11 that's what you have when you have a deal. Correct?"</p> <p>12 Answer: "If all the terms are the same."</p> <p>13 JUDGE BENTON: Okay.</p> <p>14 MR. DIAZ-ARRASTIA: And I pick up on</p> <p>15 Line 11 on Page 40 through Line 14.</p> <p>16 Q. (BY MR. DIAZ-ARRASTIA) Now, once a broker has</p> <p>17 a firm bid and a firm offer that match, is it customary</p> <p>18 for that broker to send some sort of written</p> <p>19 confirmation?</p> <p>20 A. Yes.</p> <p>21 MR. DIAZ-ARRASTIA: On Page 41, Line 6</p> <p>22 through Line 9.</p> <p>23 Q. (BY MR. DIAZ-ARRASTIA) Okay. Is it important</p> <p>24 for the traders to review the written confirmations when</p> <p>25 they receive them?</p>

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<p style="text-align: right;">532</p> <p>1 A. Yes.</p> <p>2 MR. DIAZ-ARRASTIA: Page 45, Line 15</p> <p>3 through 21.</p> <p>4 Q. (BY MR. DIAZ-ARRASTIA) After a deal is made</p> <p>5 and a confirm is sent, was is it customary back when you</p> <p>6 were trading for the parties to send each other their</p> <p>7 general terms and conditions of sale?</p> <p>8 A. I don't know what other companies do.</p> <p>9 Q. Did you-all do that?</p> <p>10 A. Yes, we did.</p> <p>11 MR. DIAZ-ARRASTIA: Page 55, Lines 3</p> <p>12 through 14.</p> <p>13 Q. (BY MR. DIAZ-ARRASTIA) Where Mr. Pascu is</p> <p>14 telling Mr. Rajevac, "We shall revert soon with our</p> <p>15 purchase order for your review." Do you see that, sir?</p> <p>16 A. Yes.</p> <p>17 Q. Back when you were trading, sir, would a buyer</p> <p>18 send a purchase order if he thought there was no deal?</p> <p>19 A. Would a --</p> <p>20 Q. Would a buyer sell -- would a buyer send a</p> <p>21 seller its purchase order if the buyer thought there was</p> <p>22 no deal, if they were not going to buy?</p> <p>23 A. No.</p> <p>24 MR. DIAZ-ARRASTIA: Page 63, Lines 9</p> <p>25 through 11.</p>	<p style="text-align: right;">534</p> <p>1 wanted, yes.</p> <p>2 Q. Okay. It's not enough that he was thinking</p> <p>3 about it, he has to tell somebody, "I need U.S. origin"?</p> <p>4 A. That's right.</p> <p>5 MR. DIAZ-ARRASTIA: And Page 68, Line 11</p> <p>6 through 15.</p> <p>7 Q. (BY MR. DIAZ-ARRASTIA) And you've seen</p> <p>8 confirms that contain a term saying it has to be of a</p> <p>9 particular origin or it can't be of a particular origin,</p> <p>10 haven't you, sir?</p> <p>11 A. Yes, I have.</p> <p>12 MR. DIAZ-ARRASTIA: Page 69, Lines 16 and</p> <p>13 17.</p> <p>14 Q. (BY MR. DIAZ-ARRASTIA) Okay. And if you</p> <p>15 would look at Exhibit 43 under the quality line --</p> <p>16 MR. DIAZ-ARRASTIA: And these are Tricon</p> <p>17 Exhibit 1. Then I continue with the question on</p> <p>18 Page 69, Line 23 through 70, Line 3.</p> <p>19 Q. (BY MR. DIAZ-ARRASTIA) Do you see that, sir?</p> <p>20 And there it specifically says "Product to be of U.S.</p> <p>21 origin"?</p> <p>22 A. Yes.</p> <p>23 Q. And you've seen confirms like that before.</p> <p>24 Correct, sir?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">533</p> <p>1 Q. (BY MR. DIAZ-ARRASTIA) Origin means where</p> <p>2 it's manufactured?</p> <p>3 A. That's correct.</p> <p>4 MR. DIAZ-ARRASTIA: Page 65, Lines 15</p> <p>5 through 16.</p> <p>6 A. There's a difference between origin and</p> <p>7 loading port.</p> <p>8 MR. DIAZ-ARRASTIA: Page 66, Line 19</p> <p>9 through Page 67, Line 1.</p> <p>10 Q. (BY MR. DIAZ-ARRASTIA) Okay. Well, I think</p> <p>11 when we left I had asked you the question whether any --</p> <p>12 in your mind when somebody says material is most likely</p> <p>13 U.S. origin, is that different from saying that it's</p> <p>14 guaranteed U.S. origin? Do you have an answer to that</p> <p>15 question?</p> <p>16 A. Yes.</p> <p>17 Q. And what's the answer? It's different?</p> <p>18 A. It's different, yeah.</p> <p>19 MR. DIAZ-ARRASTIA: Okay. And then on</p> <p>20 Page 67, Line 4 through 11.</p> <p>21 Q. (BY MR. DIAZ-ARRASTIA) Now, sir, will you</p> <p>22 agree with me that if Mr. Wilson wanted -- needed to buy</p> <p>23 U.S. origin material, he needed to include that in his</p> <p>24 firm bid?</p> <p>25 A. Somewhere he has to tell that that's what he</p>	<p style="text-align: right;">535</p> <p>1 MR. DIAZ-ARRASTIA: On Page 70, Line 16</p> <p>2 through 22. And now I'm referring to Tricon Exhibit 2.</p> <p>3 Q. (BY MR. DIAZ-ARRASTIA) Okay. And there under</p> <p>4 the quality line, this one states, "Product must be of</p> <p>5 non-Iranian or Chinese origin." Do you see that, sir?</p> <p>6 A. Yes.</p> <p>7 Q. You've seen that before in broker confirms,</p> <p>8 have you not, language like that?</p> <p>9 A. I've seen it before, yes.</p> <p>10 MR. DIAZ-ARRASTIA: Okay. Page 71,</p> <p>11 Lines 1 through 7.</p> <p>12 Q. (BY MR. DIAZ-ARRASTIA) And if you will look</p> <p>13 at Exhibit 45 now --</p> <p>14 MR. DIAZ-ARRASTIA: That would be Tricon</p> <p>15 Exhibit 3.</p> <p>16 Q. (BY MR. DIAZ-ARRASTIA) Now, sir, this is</p> <p>17 again similar to 43 and 44. Correct, sir?</p> <p>18 A. Yes.</p> <p>19 Q. And you also haven't seen Exhibit 45 before</p> <p>20 today?</p> <p>21 A. No.</p> <p>22 Q. Correct?</p> <p>23 MR. DIAZ-ARRASTIA: Okay. Moving down to</p> <p>24 Page 71, Line 11.</p> <p>25 Q. (BY MR. DIAZ-ARRASTIA) Okay. And under the</p>

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<p style="text-align: right;">536</p> <p>1 quality line, it also states "this time" in parentheses 2 "No Iranian or Chinese origin." Do you see that, sir? 3 A. I see it. 4 Q. And you've seen confirms similar -- that 5 contain similar language back when you were trading. 6 Correct, sir? 7 A. Yes. 8 MR. DIAZ-ARRASTIA: Page 75, Line 18 9 through 25. 10 Q. (BY MR. DIAZ-ARRASTIA) Back when you were a 11 trader, sir, was it common for traders to sell material 12 that they did not yet own? 13 A. Yes. 14 Q. Do traders sell material when they are short 15 on that material back when you were a trader? 16 A. Yes. 17 Q. Was that common? 18 A. Some people did it. It was a developing art 19 at that time. 20 MR. DIAZ-ARRASTIA: Okay. Page 76, 21 Line 15 through Page 77, Line 10. 22 Q. (BY MR. DIAZ-ARRASTIA) Now, hypothetically if 23 a trader sells a load of MX that he does not yet own -- 24 MR. DIAZ-ARRASTIA: And Mr. Cofran nodded 25 his head.</p>	<p style="text-align: right;">538</p> <p>1 Q. And when there's no activity, it's very hard 2 to find a buyer. Correct? 3 A. Yes. 4 MR. DIAZ-ARRASTIA: And those are the 5 selections that we wanted to read. 6 JUDGE BENTON: All right. 7 MR. DIAZ-ARRASTIA: And at this moment -- 8 JUDGE BENTON: You're going to read some 9 after all? 10 MR. LEE: No, I'm not. I think that -- I 11 had the one optional completeness. And I'm sure that 12 y'all will read it if you want to and -- 13 JUDGE DAVIDSON: I will read it, I 14 promise, all of it. 15 MR. DIAZ-ARRASTIA: Well, the only thing 16 that I want to do before I rest is that yesterday 17 Mr. Lockwood wrote -- made some calculations on this 18 board and we would like to mark them as an exhibit for 19 the arbitration. It will be Tricon Exhibit 41. 20 JUDGE BENTON: All right. Very good. 21 MR. DIAZ-ARRASTIA: Let me just find a 22 pen. 23 (Tricon Exhibit 41 marked.) 24 MR. DIAZ-ARRASTIA: And at this moment the 25 claimant rests.</p>
<p style="text-align: right;">537</p> <p>1 Q. (BY MR. DIAZ-ARRASTIA) -- then after the sale 2 is made the price of MX begins to fall, that trader has 3 just made a good deal. Right? 4 A. Yes. 5 Q. And that is because he has just sold high and 6 he is going to be able to buy low? 7 A. Right. 8 Q. And things like that happen all the time in 9 petrochemicals trading, don't they? 10 A. Yes. 11 Q. And it could also happen that you sell today 12 and then the price begins to go up and then you're going 13 to lose money? 14 A. Yes. 15 Q. Similarly, if you're a buyer of MX and you buy 16 today and the price begins to go down, you've just made 17 a bad deal? 18 A. Hypothetically, yes. 19 MR. DIAZ-ARRASTIA: Page 80, Line 3 20 through 10. 21 Q. (BY MR. DIAZ-ARRASTIA) Have you ever heard 22 the term "the market freezes"? 23 A. Yes. 24 Q. And what does that mean? 25 A. That there's no activity.</p>	<p style="text-align: right;">539</p> <p>1 JUDGE BENTON: All right. Just to 2 address -- Mr. Lee, again, it's my understanding that 3 the parties have submitted the entirety of Mr. Cofran's 4 deposition so it is our intent to read it unless you 5 don't want us to read it. 6 MR. LEE: Well -- 7 JUDGE WOOD: No, but the Rule 11 was that 8 we would read it. 9 MR. LEE: I guess what I would say is 10 you're certainly -- it's in the evidence if you want to 11 read it. I intend to pull out any testimony that I 12 would rely upon in our briefing. So if it's something 13 that's important that I think you need to know, I'll 14 certainly put it in my briefing, but it's there for you 15 to read if you want to. I guess that's the way I 16 would -- 17 JUDGE WOOD: And I noticed -- if you have 18 seen what's been given to us -- there are exhibits 19 attached and I think they're the exhibits that are 20 referenced in the deposition. 21 MR. LEE: Okay. 22 JUDGE WOOD: So I just wanted that clear 23 on the record -- 24 MR. DIAZ-ARRASTIA: That is correct. 25 JUDGE WOOD: -- that we have these</p>

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<p style="text-align: right;">540</p> <p>1 exhibits.</p> <p>2 MR. DIAZ-ARRASTIA: That is correct.</p> <p>3 JUDGE DAVIDSON: But I'd like to make it</p> <p>4 clear that at least for the copy of the deposition I</p> <p>5 got, the copies of the handwritten exhibits are not of</p> <p>6 the highest quality. If those same exhibits are already</p> <p>7 in evidence in either the Vinmar, the Tricon or the</p> <p>8 Joint, then it doesn't matter.</p> <p>9 MR. DIAZ-ARRASTIA: Not all the exhibits</p> <p>10 are the same. There are some exhibits to the deposition</p> <p>11 that --</p> <p>12 JUDGE DAVIDSON: This one --</p> <p>13 MS. LARSON: Some of the ones that we got</p> <p>14 were very difficult to read as well.</p> <p>15 MR. DIAZ-ARRASTIA: They're -- the ones I</p> <p>16 have are not a lot better.</p> <p>17 JUDGE DAVIDSON: Okay. In that case, it</p> <p>18 is what it is.</p> <p>19 MR. LEE: Those are Gary's --</p> <p>20 JUDGE DAVIDSON: Well, it is -- the stuff</p> <p>21 is tight.</p> <p>22 MS. LARSON: This has the same pages in</p> <p>23 there.</p> <p>24 JUDGE DAVIDSON: Yeah. It is actually a</p> <p>25 little better.</p>	<p style="text-align: right;">542</p> <p>1 (At this time the witness was duly sworn</p> <p>2 by Judge Benton.)</p> <p>3 JUDGE BENTON: Mr. Lee, you may proceed.</p> <p>4 LAURENTIU PAUL PASCU,</p> <p>5 having been first duly sworn, testified as follows:</p> <p>6 DIRECT EXAMINATION (3:57 p.m.)</p> <p>7 BY MR. LEE:</p> <p>8 Q. Okay. Mr. Pascu, you don't know this, but</p> <p>9 earlier today we heard from you in your deposition and</p> <p>10 so I'm not going to spend a whole lot of time running</p> <p>11 back through things that were covered, but -- so we</p> <p>12 might just cut through it, but I would like for you to</p> <p>13 introduce yourself to the panel, please.</p> <p>14 A. My name is Laurentiu Pascu. I am working</p> <p>15 currently for Vinmar International in Houston and --</p> <p>16 Q. Okay. And, Mr. Pascu, what is it that you do</p> <p>17 for Vinmar?</p> <p>18 A. I'm a supply chain specialist.</p> <p>19 Q. And could you describe what that means at</p> <p>20 Vinmar?</p> <p>21 A. I am handling the logistics and the operations</p> <p>22 portion of the business.</p> <p>23 Q. Are you -- are you a trader?</p> <p>24 A. No.</p> <p>25 Q. Do you get involved in negotiating the</p>
<p style="text-align: right;">541</p> <p>1 MS. LARSON: Here, I'll give you these.</p> <p>2 JUDGE WOOD: Well, it's those notes that</p> <p>3 are Vinmar notes.</p> <p>4 MS. LARSON: These are slightly better.</p> <p>5 I'll pass them out.</p> <p>6 JUDGE DAVIDSON: I need one.</p> <p>7 MR. LEE: And if -- I can go check to see</p> <p>8 if we've got a better copy.</p> <p>9 JUDGE WOOD: Some of them are darker than</p> <p>10 others.</p> <p>11 JUDGE BENTON: Okay. With that --</p> <p>12 MS. LARSON: It's not terribly better.</p> <p>13 It's marginally better.</p> <p>14 JUDGE BENTON: And with that, Tricon</p> <p>15 rests?</p> <p>16 MR. DIAZ-ARRASTIA: Tricon rests.</p> <p>17 JUDGE BENTON: All right. Very good.</p> <p>18 Mr. Lee, you ready to proceed?</p> <p>19 MR. LEE: Yes, Your Honor. We will call</p> <p>20 Laurentiu Pascu, who I hope is out in the hallway.</p> <p>21 JUDGE BENTON: Laurentiu Pascu. And is</p> <p>22 the traditional oath appropriate?</p> <p>23 MR. LEE: Yes.</p> <p>24 JUDGE BENTON: Mr. Pascu, if you'll raise</p> <p>25 your right hand, please.</p>	<p style="text-align: right;">543</p> <p>1 commercial terms of an agreement?</p> <p>2 A. No.</p> <p>3 Q. How long have you been with Vinmar?</p> <p>4 A. I started January 2006.</p> <p>5 Q. And, again, I think we saw some of this, but</p> <p>6 do you mind just telling the panel a little bit about</p> <p>7 your background, where you grew up?</p> <p>8 A. I'm originally from Romania. I moved to</p> <p>9 Houston in January 2006 since I've been with Vinmar</p> <p>10 and --</p> <p>11 Q. And how long have you been with Vinmar?</p> <p>12 A. Five years. Ever since I've been in Houston,</p> <p>13 I've been with Vinmar.</p> <p>14 Q. You have had some schooling in the United</p> <p>15 States?</p> <p>16 A. Yes. I have done my master in business</p> <p>17 administration at the University of Houston.</p> <p>18 Q. As you understand it, Mr. Pascu, what</p> <p>19 authority do you have to negotiate commercial terms of a</p> <p>20 deal with Vinmar?</p> <p>21 A. No authority.</p> <p>22 Q. What authority do you have to change</p> <p>23 commercial terms?</p> <p>24 A. No authority.</p> <p>25 Q. You do know that at some point in time in the</p>

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<p style="text-align: right;">544</p> <p>1 summer of 2008 that Rick Wilson informed you of what he 2 thought was a deal with Tricon. Correct?</p> <p>3 A. Correct.</p> <p>4 Q. And what did you understand about the terms of 5 this deal?</p> <p>6 A. I understood that there could be a shipment 7 of -- a potential shipment of mixed xylene.</p> <p>8 Q. What understanding did you have of the origin 9 of the mixed xylenes?</p> <p>10 A. That it's going to come from USA.</p> <p>11 Q. Where did you obtain that understanding?</p> <p>12 A. From -- from discussion that I have had with 13 Rick.</p> <p>14 JUDGE BENTON: From discussions you had 15 with?</p> <p>16 THE WITNESS: Rick Wilson.</p> <p>17 JUDGE BENTON: Okay.</p> <p>18 Q. (BY MR. LEE) Now, as the logistics specialist 19 at Vinmar, you supervised the entry of the terms or 20 information into Vinmar's SAP system?</p> <p>21 A. Yes. I do supervise the entry of the data 22 into SAP system in Vinmar for chemicals.</p> <p>23 Q. And what is -- what is the SAP system?</p> <p>24 A. It's the system that serves for entering all 25 the data, I suppose for all management. I'm not really</p>	<p style="text-align: right;">546</p> <p>1 Q. To the extent that Mr. Anaya entered any 2 information into the SAP system at Vinmar that had 3 anything to do with this transaction, was he doing that 4 under your supervision?</p> <p>5 A. Yes.</p> <p>6 Q. Now, Joint Exhibit 7, that doesn't contain all 7 of the information that was in Vinmar's SAP system, does 8 it?</p> <p>9 A. No. Each of the tabs have -- contains a 10 certain portion of the information.</p> <p>11 Q. Okay. Now, I'd ask you to take a look at the 12 notebook, Vinmar Exhibits. Okay? And if you'll turn to 13 Vinmar Exhibit No. 4, so it's going to be Tab 4 there, 14 sir.</p> <p>15 A. Okay.</p> <p>16 Q. Okay. Now, do you recognize the pages 17 contained within Vinmar Exhibit No. 4?</p> <p>18 JUDGE BENTON: Just a second.</p> <p>19 MR. DIAZ-ARRASTIA: I have an objection to 20 two of the pages on this exhibit.</p> <p>21 And I understand the panel will consider 22 everything, but I just wanted to explain why I do not 23 believe this is reliable. In particular, I have an 24 objection to the last two pages of your exhibit, VIN 93 25 and 94.</p>
<p style="text-align: right;">545</p> <p>1 sure exactly what means SAP so...</p> <p>2 Q. You know it requires you to enter some data?</p> <p>3 A. Right. It requires me to enter -- actually it 4 requires to enter all the data referring to that 5 business or that shipment.</p> <p>6 Q. All right. Let me ask you to take a look at 7 Joint Exhibit No. 7. Mr. Pascu, there's three notebooks 8 in front of you. It's going to be the one on the top on 9 your left right there.</p> <p>10 A. Okay.</p> <p>11 Q. And if you'll turn to Tab 7.</p> <p>12 A. Okay.</p> <p>13 Q. And what are the documents contained within 14 Joint Exhibit 7?</p> <p>15 A. It is the print screen of the tabs in SAP.</p> <p>16 Q. And this refers to -- there's a name at the 17 top -- E. Anaya. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And was that -- or who was that?</p> <p>20 A. Mr. Eduardo Anaya was at the time a commercial 21 trainee and he was helping -- actually under the 22 training of logistic under my supervision at that time.</p> <p>23 Q. All right. And is Mr. Anaya still employed at 24 Vinmar?</p> <p>25 A. No.</p>	<p style="text-align: right;">547</p> <p>1 These are screens that as you see were 2 entered by Mr. Eduardo Anaya. We requested Mr. Anaya's 3 deposition but were told we could not have it because he 4 no longer works for the company, he now lives in Mexico 5 and they didn't know where he lived anymore, so he was 6 not available.</p> <p>7 We do not know when the information in 8 these screens was entered, but we have reason to think 9 that it was after this dispute. And I can get into that 10 with Mr. Pascu when I take him on cross-examination.</p> <p>11 JUDGE BENTON: We understand your concerns 12 and we'll let you take it up on cross. All right.</p> <p>13 Q. (BY MR. LEE) Okay. Mr. Pascu, do you 14 recognize the documents contained in Vinmar Exhibit 15 No. 4?</p> <p>16 A. Yes. It is a print screen of the SAP tab. 17 (Brief interruption.)</p> <p>18 JUDGE BENTON: Hold on one second.</p> <p>19 Q. (BY MR. LEE) And as I understand it, the SAP 20 system contains a number of different tabs and entries 21 that you would drill down into. Correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Pages 2 and 3 of Vinmar Exhibit No. 4, 24 is it your understanding that those two pages, in fact, 25 are contained within Vinmar's SAP system?</p>

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<p style="text-align: right;">548</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And can you tell us what -- so this</p> <p>3 would be -- how would this reside in the system? Where</p> <p>4 would we find this documentation?</p> <p>5 A. Let -- on the screen, there are three tabs.</p> <p>6 The first tab is describing delivery and all the</p> <p>7 other -- all the terms like payment terms, Incoterms,</p> <p>8 currency. There is a second tab that, going back to</p> <p>9 Page No. 1, is describing the product, the quantity, the</p> <p>10 date of delivery. And there is a third tab in the</p> <p>11 additional tabs that have the delivery details, again</p> <p>12 repeating the Incoterms, the country of origin and --</p> <p>13 Q. Okay. And what does the -- there's a</p> <p>14 statement on here about midway down on the SAP data that</p> <p>15 says, "C-T-R-Y dash Origin." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. What does that stand for?</p> <p>18 A. Country of origin.</p> <p>19 Q. And what was put in the blank?</p> <p>20 A. USA.</p> <p>21 Q. What does that signify?</p> <p>22 A. That the origin is USA.</p> <p>23 Q. Okay. And where did you obtain that</p> <p>24 understanding?</p> <p>25 A. From my discussion with Rick Wilson.</p>	<p style="text-align: right;">550</p> <p>1 Q. Now, if we -- if we look at -- I'll have to</p> <p>2 make you change notebooks for a second to the Tricon</p> <p>3 exhibit notebook. And if you'll turn to Tab No. 10.</p> <p>4 So that's going to be the bottom notebook.</p> <p>5 Now, Mr. Pascu, what is the document contained in Tab</p> <p>6 No. 10?</p> <p>7 A. Printout of the SAP entry.</p> <p>8 Q. I'm sorry?</p> <p>9 A. Printout of the SAP entry.</p> <p>10 Q. Okay.</p> <p>11 A. Printout of the SAP.</p> <p>12 Q. Okay. Now -- well, if we go to Page 2,</p> <p>13 there's a blank for origin. You see that?</p> <p>14 A. Yes.</p> <p>15 JUDGE DAVIDSON: What is --</p> <p>16 THE WITNESS: Sorry?</p> <p>17 JUDGE BENTON: This is Tricon.</p> <p>18 MR. LEE: Oh, I'm sorry. Tricon</p> <p>19 Exhibit 10. My apologies.</p> <p>20 JUDGE DAVIDSON: Tricon, the purchase</p> <p>21 order.</p> <p>22 Q. (BY MR. LEE) Now, at Page 2 of Tricon -- now,</p> <p>23 let me ask you, the entry of data into the SAP system,</p> <p>24 that is something that you do as a logistics specialist?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">549</p> <p>1 JUDGE DAVIDSON: I'm sorry. From your</p> <p>2 discussion with?</p> <p>3 THE WITNESS: With Rick Wilson. Sir, you</p> <p>4 want me to speak louder?</p> <p>5 JUDGE DAVIDSON: No, no, no, no. I just</p> <p>6 missed that one --</p> <p>7 THE WITNESS: Okay.</p> <p>8 JUDGE DAVIDSON: -- that word.</p> <p>9 THE WITNESS: Sorry.</p> <p>10 Q. (BY MR. LEE) And what is the date of this</p> <p>11 document according to the print screen?</p> <p>12 A. 24th of July.</p> <p>13 JUDGE BENTON: Where is that located?</p> <p>14 THE WITNESS: If you look on any tab, it's</p> <p>15 going to be on the right-hand side upper -- upper side,</p> <p>16 dock date. Next besides Tricon Energy, LLC.</p> <p>17 JUDGE BENTON: Okay. Let's proceed.</p> <p>18 Q. (BY MR. LEE) And the last page of Vinmar</p> <p>19 Exhibit No. 4, what does that reflect about the country</p> <p>20 of origin?</p> <p>21 A. That the origin is USA.</p> <p>22 Q. Okay. And, again, where was that</p> <p>23 understanding obtained?</p> <p>24 A. From my discussion with the trader, Rick</p> <p>25 Wilson.</p>	<p style="text-align: right;">551</p> <p>1 Q. And the initial preparation of a purchase</p> <p>2 order, is that something that you do?</p> <p>3 A. Correct.</p> <p>4 Q. Who reviews the purchase order or is the</p> <p>5 purchase order reviewed before it would be sent to the</p> <p>6 counterparty?</p> <p>7 A. The purchase order is required to be reviewed</p> <p>8 by the trader. Actually there is a requirement even if</p> <p>9 in the system for having it to be released by the</p> <p>10 trader.</p> <p>11 Q. All right. So while you or somebody within</p> <p>12 your group may prepare the data into SAP and the</p> <p>13 purchase order before it is sent, the trader will review</p> <p>14 it?</p> <p>15 A. Correct.</p> <p>16 Q. Now, at Page 2 of this purchase order, do you</p> <p>17 see the -- a line for origin?</p> <p>18 A. Yes.</p> <p>19 Q. And it's blank, is it not?</p> <p>20 A. Yes, it is blank.</p> <p>21 Q. Can you explain why it is blank?</p> <p>22 A. At the time that purchase order was still</p> <p>23 under preparation. We were waiting clarification from</p> <p>24 the trader and we were waiting for clarification</p> <p>25 actually on what is going to be the loading port.</p>

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<p style="text-align: right;">552</p> <p>1 As that information never came, we never</p> <p>2 got to a stage where we had finalized the data into the</p> <p>3 system.</p> <p>4 Q. Why is the loading port important?</p> <p>5 A. Loading ports -- loading port is very</p> <p>6 important for two reasons. One, that it's helping us</p> <p>7 understanding where should we set up the inspection</p> <p>8 instructions, the surveyor, where we should send the</p> <p>9 surveyor to inspect the cargo before it gets into the</p> <p>10 vessel.</p> <p>11 And, secondly, that it is a requirement</p> <p>12 under -- on the letter of credit to stipulate the port</p> <p>13 of loading.</p> <p>14 Q. Now, but we just saw a couple of pages from</p> <p>15 Vinmar's SAP records that reflect the country of origin</p> <p>16 as USA. Why wasn't that entered into this purchase</p> <p>17 order at this time; do you know?</p> <p>18 A. We were still waiting on the port of loading</p> <p>19 information so that we can put all these details</p> <p>20 together.</p> <p>21 Q. Is the -- is the data that is entered into the</p> <p>22 purchase order, is it manually entered or is it simply</p> <p>23 the computer takes it from SAP and puts it into the</p> <p>24 form?</p> <p>25 A. These specific places are manually entered.</p>	<p style="text-align: right;">554</p> <p>1 we would be acting on the trader's requirements.</p> <p>2 MR. LEE: I'll pass the witness.</p> <p>3 JUDGE BENTON: Mr. Diaz-Arrastia?</p> <p>4 MR. DIAZ-ARRASTIA: Okay.</p> <p>5 CROSS-EXAMINATION (4:14 p.m.)</p> <p>6 BY MR. DIAZ-ARRASTIA:</p> <p>7 Q. Mr. Pascu, do you remember when we took your</p> <p>8 deposition a couple of months ago?</p> <p>9 A. Yes, sir, I do.</p> <p>10 Q. And you did your best to answer my questions</p> <p>11 truthfully then, didn't you?</p> <p>12 A. Yes, sir, I did.</p> <p>13 Q. Now, we have looked at Joint Exhibit 10, which</p> <p>14 is the purchase order, and we have noted, as we did</p> <p>15 during the deposition that I had taken, the line for</p> <p>16 origin --</p> <p>17 A. Which one?</p> <p>18 Q. Tricon Exhibit No. 10, the purchase order.</p> <p>19 A. Okay. The one that we are looking at.</p> <p>20 Q. Right. We just talked about it. But Mr. Lee</p> <p>21 has noted, just as I noted during my deposition, that</p> <p>22 the lines for origin is blank.</p> <p>23 A. Correct.</p> <p>24 Q. And the line for origin is blank even though</p> <p>25 we saw in Vinmar Exhibit No. 4 in the second two pages</p>
<p style="text-align: right;">553</p> <p>1 Q. And just to be clear, this purchase order was</p> <p>2 never sent to Tricon. Correct?</p> <p>3 A. No.</p> <p>4 Q. No, it was not sent?</p> <p>5 A. No, it was not sent. Sorry.</p> <p>6 Q. When you -- you sent an e-mail to Vuk Rajevac</p> <p>7 at Tricon and you mentioned to Mr. Rajevac that you</p> <p>8 would be sending at some point in time a purchase order.</p> <p>9 Do you recall that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Was the purchase order that you were referring</p> <p>12 to, was it -- would it be something ultimately like what</p> <p>13 we see in Vinmar Exhibit No. 10?</p> <p>14 A. Yes.</p> <p>15 Q. Now, as to what terms were included in that</p> <p>16 purchase order, who would make the decision about that?</p> <p>17 A. As mentioned, the trader has the final review</p> <p>18 of the -- of the purchase order and he's going to be</p> <p>19 reviewing the terms and he's going to be agreeing on</p> <p>20 each of these terms before it's sent -- it gets sent to</p> <p>21 the other counterparty.</p> <p>22 Q. And if so terms are removed from the purchase</p> <p>23 order or added to the purchase order, that would be</p> <p>24 something that the trader would make the decision on?</p> <p>25 A. We would be acting -- on the operation level,</p>	<p style="text-align: right;">555</p> <p>1 that the SAP system in those documents had an entry for</p> <p>2 origin.</p> <p>3 A. Correct.</p> <p>4 Q. And it is your testimony that the purchase</p> <p>5 order is generated automatically by the SAP system?</p> <p>6 A. There are two portions on this. One, if you</p> <p>7 look on the front page, you'll find seller, buyer and</p> <p>8 many other data before the text. So before total terms</p> <p>9 and total value, subject to tolerance, USD. That is</p> <p>10 coming automatic from the system.</p> <p>11 Then the text from down -- from down to</p> <p>12 bottom from terms, he used -- until the signature</p> <p>13 portion, Best Regards, Rick Wilson, that is manual</p> <p>14 entries that is coming from the system.</p> <p>15 Q. But you remember telling me during your</p> <p>16 deposition that the purchase order was automatically</p> <p>17 generated when you hit the print button on the SAP</p> <p>18 system?</p> <p>19 A. Right. I'm describing to you the process what</p> <p>20 it takes, the data, how it takes when it gets generated</p> <p>21 from the SAP.</p> <p>22 JUDGE DAVIDSON: Wait a minute. I want to</p> <p>23 make sure I understand that.</p> <p>24 Are you saying that when a bid comes in</p> <p>25 the contents of that bid somehow get projected on to the</p>

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<p style="text-align: right;">556</p> <p>1 spreadsheet that is -- that are on those computer 2 screens without any manual input? 3 THE WITNESS: Let me clarify. Everything 4 is manual. Now, we are -- we are entering manual in 5 each tab. What I'm suggesting is that -- what I'm 6 saying is that this text from the Terms For the Above PO 7 are as follows till the end where the signature portion 8 is. 9 These as well are entered manual but -- 10 JUDGE DAVIDSON: Okay. 11 THE WITNESS: -- they are not like -- they 12 are not coming directly from the -- you know, like the 13 price, I'm not doing anything manual after the tab is 14 entered, but from the text you still can modify it. 15 JUDGE DAVIDSON: Okay. I just misund -- I 16 think I misunderstood what you said when you said it was 17 automatically input off of a fax. I was going to 18 wonder -- 19 THE WITNESS: No, no. 20 JUDGE DAVIDSON: -- how did you manage to 21 do that. Okay. 22 THE WITNESS: Sorry. 23 JUDGE DAVIDSON: Okay. Sorry to 24 interrupt. It just occurred -- 25 Q. (BY MR. DIAZ-ARRASTIA) Mr. Pascu, let me hand</p>	<p style="text-align: right;">558</p> <p>1 And then I said, "And that automatically 2 generates a purchase order confirmation?" 3 And you said, "Upon printing of this 4 document." 5 A. Okay. 6 Q. Do you remember giving me that testimony? 7 A. Okay. 8 Q. And what you're saying is that you didn't give 9 me a full answer because the origin part of the purchase 10 order is actually not generated automatically? That's 11 your story today? 12 A. No. 13 MR. LEE: I object to the question. That 14 is not -- his testimony is entirely consistent today -- 15 MR. DIAZ-ARRASTIA: Well -- 16 MR. LEE: -- with what he said in his -- 17 JUDGE BENTON: Just a second. Are you 18 finished? 19 MR. LEE: Yes, Your Honor. 20 JUDGE BENTON: You can take it up in 21 redirect. Let's proceed. 22 A. Okay. What I'm saying -- what I'm saying is 23 the following. There are three -- if we can go back to 24 the -- to the print screens of the -- of the SAP. Okay. 25 I don't know where --</p>
<p style="text-align: right;">557</p> <p>1 you a transcript of the deposition that you gave me. 2 A. Okay. 3 Q. And we're going to talk a little bit about 4 that. 5 A. Okay. 6 Q. If you will turn to Page 48. 7 A. 48 did you say? 8 Q. Page 48. There are for pages to a side on 9 that document. 10 A. Okay. 11 Q. Okay. Do you remember when I asked you -- and 12 I think in your deposition, Exhibit 34 to your 13 deposition was Tricon Exhibit 10 in this hearing. It's 14 the same document, the purchase order. 15 So do you remember when I asked you, "How 16 was Exhibit No. 34," which is the purchase order, now 17 Exhibit 10, "or documents like that -- how are Vinmar's 18 purchase order confirmation prepared?" 19 A. Okay. 20 Q. Do you remember when I asked you that? And 21 you said, "What do you mean?" 22 I went back. "Well, generally how are 23 they prepared?" 24 And you say, "Data is entered in this 25 case."</p>	<p style="text-align: right;">559</p> <p>1 JUDGE WOOD: Is that these blue things? 2 THE WITNESS: Yeah. We -- 3 MR. LEE: Tab 7. 4 JUDGE WOOD: Tab 7, Joint. 5 MR. LEE: It's in the top notebook? 6 THE WITNESS: This one. 7 MR. LEE: No. I'm sorry. That one. Yes. 8 A. Okay. Whenever we are getting the data, 9 whether it's coming through e-mail or broker, we are -- 10 we are entering the data into SAP. And you see there is 11 a top tab called text, third -- third one from the 12 left-hand side on top. It's called -- it's called the 13 tab Text. 14 There is where the text gets written into 15 it. And it's showing up after printing on this -- on 16 this paperwork, Exhibit No. 10. So -- okay. So what 17 I'm -- what I'm referring, that all -- this tab, Text, 18 contains all the data from the terms of the above field 19 are as follows till the signature portion. 20 Okay. And those terms are for something 21 that can be modified, whether the trader requires or 22 not. And once you get printed, that automatically -- 23 that text is coming on the -- on the paper. 24 Q. (BY MR. DIAZ-ARRASTIA) Okay. 25 A. It's placed on the paper.</p>

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<p style="text-align: right;">560</p> <p>1 Q. Okay. Mr. Pascu, now take a look at Page 54. 2 Okay. Look at Line 5 of Page 54. And I 3 asked you again -- do you remember this question? 4 "Okay. I understand that no one actually 5 gets down and writes or types in all of this 6 information, it's automatically created by the system." 7 A. Okay. 8 Q. And you understand that we're referring to the 9 purchase order. And you say, "Okay"? 10 And then I asked you, "And when you hit 11 the print PO button it just generates this depending on 12 what information was entered?" 13 And you say, "Okay." 14 Now, I say, "Is that all true?" 15 And you say, "Yes." 16 Do you remember that? 17 A. Okay. 18 Q. So I asked you a second time whether the 19 purchase order was generated automatically and you said 20 "Yes" without any qualifications. 21 A. I'm saying yes as well today. I'm not -- I'm 22 not -- I'm not disputing what I'm saying. What I'm 23 trying to say to you -- you are trying to say something 24 and I'm saying the same thing, said with different 25 words.</p>	<p style="text-align: right;">562</p> <p>1 the question, "All right. That's fine. Look at the 2 second Page of Exhibit 34." 3 A. Okay. 4 Q. And that is the second page of the purchase 5 order. Correct? 6 A. Okay. Correct. 7 Q. Now, this is where you're now saying this is 8 entered manually. Right? 9 A. Now -- 10 MR. LEE: I don't believe that's what he 11 said. 12 JUDGE DAVIDSON: Let -- 13 MR. LEE: Okay. I'm -- 14 JUDGE DAVIDSON: Please let him answer. 15 I'm sorry. 16 A. Here was -- 17 Q. (BY MR. DIAZ-ARRASTIA) I'm asking, is the 18 information beginning on the -- 19 A. No. 20 Q. -- second page, is that now entered manually? 21 A. No. All the data initially is entered 22 manually. There is no such a system that is picking up 23 the data from somewhere. All the data is entered 24 manually. 25 What I'm trying to say is that you have on</p>
<p style="text-align: right;">561</p> <p>1 What I'm trying to say is the following. 2 I'm trying to say that this text as it is here, okay, is 3 something that the system allows you to change at any 4 point in time, depending on what -- the way that -- the 5 way that the process is, we are working on this text as 6 we are -- as we are going to the trader. 7 We are -- the trader is reviewing the 8 paperwork and he's going to come back to us with any 9 modifications that he's going to require. Then we go 10 back into a system, apply the modification and issue the 11 purchase order. This is the process. So I'm not saying 12 that is -- 13 Q. Okay. Now, Mr. Pascu, remember that so far I 14 had asked you questions in general about how the 15 purchase order was generated. Do you remember that I 16 also asked you some specific questions about it? Do you 17 recall -- 18 A. About what? 19 Q. -- that? 20 It was some time ago. You may not 21 remember. 22 A. Okay. 23 Q. I want you to take a look at Page 55. 24 A. Okay. 25 Q. In Page 55, I asked you -- Line 1, I asked you</p>	<p style="text-align: right;">563</p> <p>1 the Tab No. 3, which is -- which is showing on the -- 2 right now I'm looking to this screen. Okay. This I'm 3 not entering any text manually. I'm just having a 4 dropdown list and I'm taking that dropdown list and I'm 5 putting, okay, it is your USA origin. I'm USA origin. 6 So that -- this is how manually it's entered. 7 Then on the text it's something that I can 8 type in and therefore I am saying it's manual typing. 9 Let's put it manual typing if that is going to avoid the 10 confusions that we are seeing. 11 JUDGE WOOD: Could we get for the record 12 what exhibit number the witness is holding up so we can 13 look at the same one? 14 JUDGE BENTON: The witness is holding 15 up -- 16 MR. LEE: Joint Exhibit 7. 17 MR. DIAZ-ARRASTIA: Joint Exhibit 7. 18 JUDGE WOOD: Okay. And exactly which 19 page? You know, don't say "that VIN thing down at the 20 bottom." Is this 91-B? 21 THE WITNESS: 91-A. 22 JUDGE WOOD: A. 23 MR. LEE: A. 24 JUDGE WOOD: A. Thank you. 25 Q. (BY MR. DIAZ-ARRASTIA) Okay. Mr. Pascu --</p>

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<p style="text-align: right;">564</p> <p>1 A. I will -- one second. I will go back also to 2 the screens that we were showing. Okay. The initial 3 Vinmar -- 4 Q. Vinmar 4? 5 A. Yeah, Vinmar 4. Same thing here. Okay? So, 6 again, this -- if you look here on VIN 93, okay, this 7 is -- again is a dropdown list that we have to pick on. 8 Okay. And we are just scrolling down, pick the right 9 information and this is how it gets inserted into the -- 10 into the system. 11 Q. Okay. Now, let's continue on Page 55. 12 A. On the tab Text, however, this starts as blank 13 and this is where we are entering this text. 14 Q. Let's continue on Page 55. My next question 15 to you was, "Do you see where there is a line that says 16 origin on the purchase order?" 17 And your answer is, "Yes." 18 "And it is blank. Correct?" 19 Your answer is, "Yes." 20 And then my question was, "And would that 21 be because no origin was entered into the system prior 22 to this being printed?" 23 And your answer was, "It would have been 24 that the word here was not entered into the system, 25 yes."</p>	<p style="text-align: right;">566</p> <p>1 MR. DIAZ-ARRASTIA: Highlight that from 2 Rick Wilson. Let's start with the date. 3 MR. LEE: May I make sure he has the 4 exhibit in front of him? 5 JUDGE DAVIDSON: Sure. 6 MR. DIAZ-ARRASTIA: Sure. Joint 7 Exhibit 8. 8 MR. LEE: Joint Exhibit 8. 9 Q. (BY MR. DIAZ-ARRASTIA) Do you have that in 10 front of you, sir? 11 A. Yes. 12 Q. And we talked about this during your 13 deposition also. Remember? 14 A. I do remember. 15 Q. And this is an e-mail from Rick Wilson? 16 MR. DIAZ-ARRASTIA: Can you bring back the 17 highlighting, Tracy? 18 Q. (BY MR. DIAZ-ARRASTIA) From Rick Wilson to 19 Eduardo Anaya and you and Ana Campos. Correct? 20 A. Seems so, yes. 21 Q. And I think you testified in your deposition 22 that Ana Campos was another person you supervised? 23 A. Correct. 24 Q. Okay. And Mr. Wilson is responding to a 25 request from Mr. Anaya in which he asks, "We need the</p>
<p style="text-align: right;">565</p> <p>1 "Before this was printed?" 2 "Before this was printed." 3 Do you remember telling me that back then? 4 A. One second. Let me -- okay. I read this. 5 Q. That's what you told me back then? 6 A. Okay. 7 Q. And you told that under oath? 8 A. I'm not disputing it. 9 Q. Now, let's take a look at these screens that 10 are VIN Exhibit No. 4, the second two pages, VIN 93 and 11 94. And these were prepared by Eduardo Anaya. Is that 12 correct? 13 A. Yes. 14 Q. The gentleman that doesn't work for Vinmar 15 anymore. Correct? 16 A. Correct. 17 Q. No one knows where he is anymore? 18 A. I am not able to answer that question. 19 Q. And you testified that he entered country of 20 origin, USA, on 7-24? 21 A. Correct. 22 MR. DIAZ-ARRASTIA: Put this on the 23 screen, Tracy, will you? 24 Q. (BY MR. DIAZ-ARRASTIA) Will you take a look 25 at Joint Exhibit No. 8? Look at Mr. Wilson's e-mail.</p>	<p style="text-align: right;">567</p> <p>1 origin to complete the purchase order." Isn't that what 2 he asks for? 3 A. "He's asking to complete the order, we need 4 port of origin." This is what is written. 5 Q. And Mr. Wilson responds, "Re: Origin, we won't 6 know until we declare discharge port. Most likely USG." 7 That's what he says. Right? 8 A. Again, I know that the question for Eduardo 9 was, "What is the port of origin?" 10 Q. What it says is, "Re: Origin, we won't know 11 until we declare discharge port. Most likely USG." 12 Correct? That's what it says? 13 A. Again, Eduardo and I asked for port of origin 14 as a -- as a step into our process. Okay? 15 Q. And Wilson is giving Mr. Anaya and you and 16 Ms. Campos that information on July 25. Correct? 17 A. No. Again, Eduardo Anaya and I asked port of 18 origin. Okay? Asked Rick from where this cargo shall 19 be shipped from? What is the port of origin in the USA 20 that the cargo shall be shipped from? And this is what 21 Eduardo and I asked. 22 Q. Okay. But Mr. Wilson gives Mr. Anaya his 23 answer on July 25? 24 A. Okay. 25 Q. Correct? That's what that says?</p>

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<p style="text-align: right;">568</p> <p>1 A. He's showing that the answer was given on 2 July 25. 3 Q. But somehow Mr. Anaya already knew on the 24th 4 that the country of origin was the U.S. 5 A. Again, and I re -- I'm coming back to you. 6 I'm saying that the origin was known. What we are -- we 7 are clarifying what -- what is the port of loading. And 8 Mr. Eduardo Anaya is asking the question, "What is the 9 port of loading?" And this is what I think that 10 Mr. Rick Wilson is trying to answer to Mr. Anaya. 11 Q. Okay. And Mr. Anaya's response to Mr. Wilson 12 was, "Okay. That is what you wrote on the PO?" 13 A. Okay. 14 Q. Now, let's take a look at the PO. The PO has 15 a line for origin. Right? 16 A. Okay. 17 Q. It has that. Right? 18 MR. DIAZ-ARRASTIA: Let's put that up, 19 Tracy, Tricon Exhibit 10. 20 Q. (BY MR. DIAZ-ARRASTIA) It has a line for 21 origin. Correct? 22 A. Origin was already put. Remember that I was 23 telling you that whenever we are entering the PO we 24 are -- we have entered the origin of the cargo as a 25 requirement of our system. So the origin of the -- of</p>	<p style="text-align: right;">570</p> <p>1 A. Sorry? 2 Q. Is there any line in the Vinmar purchase order 3 that says port of origin -- I'm sorry -- I mean port of 4 loading? 5 A. So say again. 6 Q. I'm sorry. 7 JUDGE BENTON: Yeah. Ms. Larson is trying 8 to script it for you. Let's try it one more time. 9 MR. DIAZ-ARRASTIA: Yeah. 10 Q. (BY MR. DIAZ-ARRASTIA) Mr. Pascu, on Tricon 11 Exhibit 10, the Vinmar purchase order, is there any line 12 for port of loading? 13 A. Port of loading is not shown on the purchase 14 order because it was never revealed to me; therefore, 15 it's not shown. 16 MR. DIAZ-ARRASTIA: I pass the witness. 17 JUDGE DAVIDSON: Mr. Lee? 18 MR. LEE: No further questions. 19 JUDGE BENTON: You're excused. 20 THE WITNESS: Okay. 21 JUDGE WOOD: Could I ask just one -- 22 JUDGE BENTON: Just one second. You're 23 excused. 24 THE WITNESS: Okay. 25 JUDGE BENTON: Call your next witness.</p>
<p style="text-align: right;">569</p> <p>1 the -- of the cargo was already shown into SAP and this 2 is what Eduardo is saying. 3 If you are looking to this one, it's 4 showing the origin USA. So this is what we have shown. 5 Now, the port of loading was never clarified and 6 therefore we only want to complete the data. 7 Q. Mr. Pascu, on your purchase order next to 8 origin, there's just a big blank. Right? 9 A. Again -- 10 Q. Can you answer my question? 11 A. What question? 12 Q. Next to origin there's a big blank? 13 A. Again, you are -- you are asking me -- 14 JUDGE BENTON: Just a second. 15 Irrespective of what the witness says, the panel can 16 read. And it is apparent to the panel what the document 17 says. 18 MR. DIAZ-ARRASTIA: All right. 19 JUDGE BENTON: Let's proceed. 20 Q. (BY MR. DIAZ-ARRASTIA) Then let's ask you one 21 more question, Mr. Anaya. 22 A. No. Pascu. 23 Q. Mr. Pascu. I'm sorry. On your purchase 24 order, Joint Exhibit No. 10, is there any line in there 25 for port of origin?</p>	<p style="text-align: right;">571</p> <p>1 MR. LEE: We have no more witnesses. 2 Subject to the briefing schedule that we 3 discussed and the opportunity to respond to their 4 attorneys' fees. 5 JUDGE BENTON: Okay. So the live 6 testimony is concluded. But for the record, the 7 evidence is not concluded. The record is not closed. 8 And so there will be no need to convene tomorrow. 9 Correct? 10 MR. DIAZ-ARRASTIA: There will be no need 11 to meet tomorrow, but let me ask something. I 12 understand that the record is not closed because 13 obviously there's going to be argument, but is there 14 contemplation that there will be additional evidence 15 presented in writing? 16 JUDGE BENTON: Yeah. The evidence is -- 17 JUDGE DAVIDSON: Attorneys' fees. 18 MR. DIAZ-ARRASTIA: Oh, my attorneys' 19 fees. 20 MR. LEE: But other than that -- 21 MR. DIAZ-ARRASTIA: Other than that, the 22 evidence is -- 23 JUDGE DAVIDSON: Well, and he may want 24 to -- 25 MR. LEE: And my response.</p>

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<p>1 JUDGE DAVIDSON: And he may want to rebut 2 your attorneys' fees. 3 MR. DIAZ-ARRASTIA: Okay. But we're 4 talking about just the attorneys' fees? 5 MR. LEE: Correct. 6 MR. DIAZ-ARRASTIA: I just wanted to 7 clarify. 8 MR. LEE: I mean, certainly I would -- I 9 might have evidence in response to his attorneys' 10 fees. 11 JUDGE BENTON: As I -- I think I got it 12 right the first time. 13 MR. DIAZ-ARRASTIA: Yes, you did, Your 14 Honor. 15 JUDGE BENTON: Anything else? 16 MR. DIAZ-ARRASTIA: Nothing else here. 17 And there will be not be a need to meet tomorrow. 18 JUDGE BENTON: Okay. 19 MR. LEE: One housekeeping matter, and 20 it's entirely up to the panel. Would you like for us to 21 submit a revised exhibit list and pull out or just keep 22 everything that you got and leave it? 23 Okay. Then -- 24 JUDGE WOOD: I'm afraid if you changed any 25 of these numbers I'd be totally lost.</p>	<p>1 record. 2 (Proceedings concluded at 4:37 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 MR. DIAZ-ARRASTIA: It will make things 2 more -- 3 MS. LARSON: The transcript would be 4 impossible. 5 MR. DIAZ-ARRASTIA: It would make things 6 more difficult. 7 JUDGE WOOD: I know that. 8 JUDGE BENTON: Okay. We're still on the 9 record. We're probably giving the reporter a problem. 10 Anything else before we go off the record? 11 MR. DIAZ-ARRASTIA: I'm done. 12 JUDGE BENTON: Okay. Mr. Lee? 13 MR. LEE: I'm done. I guess just -- there 14 were some exhibits that weren't discussed, but as I 15 understand it are they in? 16 JUDGE BENTON: They're in. 17 MR. LEE: Okay. 18 JUDGE DAVIDSON: All of yours, all of his, 19 all of joints. 20 JUDGE BENTON: Judge Wood, anything else 21 you need? 22 Judge Davidson? 23 JUDGE DAVIDSON: I'm as happy as a pig in 24 slop. 25 JUDGE BENTON: All right. We're off the</p>	<p>1 STATE OF TEXAS) 2 COUNTY OF HARRIS) 3 4 I, Diana Ramos, a Certified Shorthand Reporter 5 in and for the State of Texas, do hereby certify that 6 the above and foregoing pages contain a full, true and 7 correct transcription of my shorthand notes taken upon 8 the occasion set forth in the caption hereof, as reduced 9 to writing by me and under my supervision. 10 I further certify that the transcription of my 11 notes truly and correctly reflects the exhibits offered 12 into evidence, if any; that I am neither counsel for nor 13 related to any party in this cause and am not 14 financially interested in the outcome. 15 Certified to by me on this 28th day of 16 September, 2010. 17 18 19 20 21 22 23 24 25</p> <p>Diana Ramos CSR Texas CSR No. 3133 Expiration Date: 12-31-2010 DEPOTEXAS Firm Registration No. 95 13101 Northwest Freeway, Suite 210 Houston, Texas 77040 Tel: (281) 469-5580 FAX: (713) 460-2525</p>

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CLOSING ARGUMENTS

<p>1 APPEARANCES</p> <p>2</p> <p>3 PANEL OF ARBITRATORS:</p> <p>4 Honorable Levi J. Benton, Chair,</p> <p>5 Honorable Sharolyn Wood</p> <p>6 Honorable Mark Davidson</p> <p>7</p> <p>8 REPRESENTING CLAIMANT TRICON ENERGY, LTD.:</p> <p>9 Mr. George R. Diaz-Arrastia</p> <p>10 Ms. Tracy D. Larson</p> <p>11 SCHIRRMESTER, DIAZ-ARRASTIA & BREM, L.L.P.</p> <p>12 700 Milam, Tenth Floor</p> <p>13 Houston, Texas 77002</p> <p>14 Tel: 713.221.2500</p> <p>15 FAX: 713.228.3510</p> <p>16 gdarrastia@sdblawn.com</p> <p>17 tlarrison@sdblawn.com</p> <p>18</p> <p>19 REPRESENTING RESPONDENT VINMAR INTERNATIONAL, LTD.:</p> <p>20 Mr. Stephen H. Lee</p> <p>21 Mr. R. Blake Runions</p> <p>22 PORTER & HEDGES, L.L.P.</p> <p>23 1000 Main Street, Suite 3600</p> <p>24 Houston, Texas 77002</p> <p>25 Tel: 713.226.6000</p> <p>FAX: 713.228.1331</p> <p>slee@porterhedges.com</p> <p>brunions@porterhedges.com</p> <p>ALSO PRESENT:</p> <p>Mr. Brad Lockwood</p> <p>Mr. Mark Antonovich</p> <p>Ms. Amy Falcon</p>	<p>4</p> <p>1 JUDGE BENTON: We are back on the record in</p> <p>2 the matter of Tricon Energy, Limited versus Vinmar</p> <p>3 International, Limited. We're proceeding today and, as</p> <p>4 the Panel understands what -- well, rather, what we</p> <p>5 understand -- let me express where we contemplate we'll go</p> <p>6 today.</p> <p>7 The Panel contemplates that we'll have some</p> <p>8 discussion maybe about the Claimants attorneys' fees</p> <p>9 evidence if the Claimant wishes to address its attorneys'</p> <p>10 fees evidence and/or if the Respondent so desires. If</p> <p>11 neither side wishes to discuss the issue of attorneys'</p> <p>12 fees, then we'd like an indication from both sides that</p> <p>13 the evidentiary record is closed.</p> <p>14 Upon announcement that the evidentiary</p> <p>15 record is closed, then we'll proceed to closing arguments</p> <p>16 and while the Panel has read the very well prepared</p> <p>17 written closing briefs, we invite you to amplify such</p> <p>18 matters in the closing papers as you desire and -- and</p> <p>19 then at that -- at the conclusion of that, at the</p> <p>20 conclusion of any questions that the Panel might have,</p> <p>21 we'd like announcements that the entirety of the record is</p> <p>22 thereafter closed. That's kind of where we see it going.</p> <p>23 Mr. Diaz-Arrastia, is that consistent with --</p> <p>24 MR. DIAZ-ARRASTIA: That will be fine, your</p> <p>25 Honor.</p>
<p>3</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3</p> <p>4 CLOSING ARGUMENTS</p> <p>5</p> <p>6 ON BEHALF OF THE CLAIMANT</p> <p>7 Mr. Diaz-Arrastia 15</p> <p>8</p> <p>9</p> <p>10 ON BEHALF OF THE RESPONDENT</p> <p>11 Mr. Lee 38</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Reporter's Certificate 105</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>5</p> <p>1 JUDGE BENTON: Okay. Mr. Lee?</p> <p>2 MR. LEE: Certainly.</p> <p>3 JUDGE BENTON: Very well. Anything you</p> <p>4 wish to say about attorneys' fees?</p> <p>5 MR. DIAZ-ARRASTIA: I think my attorneys'</p> <p>6 fees are fairly well covered in the written submissions</p> <p>7 made. If the Panel has particular questions, I'm very</p> <p>8 pleased to answer them about the attorneys' fees or any</p> <p>9 other part of the record for the law. The way that I</p> <p>10 anticipated this hearing is, given that there has been so</p> <p>11 much written material presented in summing up, I felt that</p> <p>12 we would spend a lot of time seeing where is it that you</p> <p>13 as the decision-makers have a question.</p> <p>14 With regard to the evidentiary record,</p> <p>15 there is one aspect of the evidentiary record that came</p> <p>16 up. Well, it was raised by the closing statement and post</p> <p>17 hearing brief submitted by Vinmar. A criticism was made</p> <p>18 of Mr. Chuck Matthews' report for not considering as an</p> <p>19 avoidable cost the inspection cost. As you'll recall, we</p> <p>20 made the agreement right at the end of the prior</p> <p>21 evidentiary hearing that we would submit Mr. Matthews'</p> <p>22 report and he will not testify live.</p> <p>23 The question of the inspection costs was</p> <p>24 actually raised to Mr. Matthews during the deposition that</p> <p>25 Mr. Runions took of him and he was specifically asked why</p>

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<p style="text-align: right;">6</p> <p>1 he did not consider that inspection costs were an 2 avoidable cost and he answered that question during his 3 deposition. Do we have that deposition that we can put up 4 on the screen, Tracy? 5 And the quick answer is that it is 6 customary that inspection costs will be picked up by the 7 supplier. In fact, that is what happened in the 8 replacement sale, the KP sale, and that is the reason why 9 Mr. Matthews did not consider that inspection costs was an 10 avoidable cost because it's a cost that would not have 11 been incurred since the supplier would pick it up. 12 It is on Page 91 of Mr. Matthews' 13 deposition at Line 10 through Line 15 and then again on 14 Page 92, Lines 8 through 14, and this is Mr. Runions, 15 counsel for Vinmar, asking the questions. I would just 16 like to read that into the record and that would be the 17 only additional evidence that I would like to submit, and 18 I have copies also to provide the Panel. 19 JUDGE BENTON: Okay. 20 MR. DIAZ-ARRASTIA: I am running short, 21 unfortunately. If I could just read that. Like I said, 22 on Page 90 -- on Page 91 of Mr. Matthews' deposition, the 23 question is asked -- 24 MR. LEE: Just, I don't want to interrupt 25 too much, but I do want to make the Panel aware I object</p>	<p style="text-align: right;">8</p> <p>1 based upon -- based on Mr. Lockwood's telling you that?" 2 "Based on thinking that the supplier is 3 going to pick it up," and there is some more testimony 4 about demurrage costs, which was not raised in Vinmar's 5 brief and I'm not submitting that, but with that 6 additional evidence, from Tricon's point of view, the 7 evidentiary record is closed. 8 JUDGE BENTON: Very well. Mr. Lee? 9 MR. LEE: Let me first address the -- this 10 testimony from Mr. Matthews and the agreement that we 11 reached was that the report would come in as it stood and 12 they didn't put on any evidence from Mr. Matthews beyond 13 the report. He didn't deal with that in his report. 14 That's an omission from his calculation. They didn't 15 address the inspection costs. So I object to counsel 16 putting that testimony in now because the agreement was we 17 just stick the report in. Had I known that this was going 18 to happen, I would have cross-examined him at the hearing. 19 The other thing I would point out, and I 20 didn't know that this was going to happen, but 21 Mr. Matthews testified in his deposition over and over 22 again that he had no personal knowledge, in fact, didn't 23 have any knowledge of any of this stuff, and all of his 24 report and his testimony was based entirely on what 25 Mr. Lockwood had told him. In fact, just the little piece</p>
<p style="text-align: right;">7</p> <p>1 to this and I'll tell you why when we're finished, but I 2 didn't want to let this start without at least noting my 3 objection to trying to introduce evidence from 4 Mr. Matthews based on the agreement that we had reached at 5 the hearing. 6 JUDGE BENTON: Okay. I'll come back and 7 give a ruling on the objection in a second. 8 MR. DIAZ-ARRASTIA: And if I could just 9 quickly address that, the only reason why I wanted to 10 bring that up is because of the issue of why he did not 11 consider inspection costs was specifically raised in the 12 post hearing brief filed by Vinmar. That specific 13 question was specifically answered in Mr. Matthews' 14 deposition and I think it's only fair that the Panel be 15 aware of what that answer is. 16 And the question was asked by Mr. Runions: 17 "How about inspection costs?" And Mr. Matthews' response 18 was: "Inspection costs are -- our assumption at the time 19 is that we would be able to get suppliers to pick up those 20 inspection costs, is what happens in the market from time 21 to time. It's my understanding that's a norm in the 22 market." 23 On Page 92 there is, again, on Line 8: 24 "No, there's -- we didn't think we would incur 25 inspections," and Mr. Runions asked him: "And that's</p>	<p style="text-align: right;">9</p> <p>1 that they had showed you, if you had read the next line on 2 Page 92, he -- the question was: "And that's based on 3 what Mr. Lockwood told you?" Answer: "Yes." 4 So I -- if the Panel's going to consider 5 that testimony, I would like the opportunity to supplement 6 with other excerpts from Mr. Matthews' deposition, making 7 it clear that he does not have any personal knowledge and 8 I -- I could do that in a day or two, but I'm not ready -- 9 I don't have it right now. I would have had it if I had 10 known, but I needed a day to pull that together and submit 11 the testimony from Mr. Matthews on his lack of personal 12 knowledge and expertise. 13 JUDGE BENTON: Okay. Anything else? 14 MR. LEE: On the attorneys' fees, the only 15 thing I would say about the attorneys' fees is the Panel 16 has the discretion to award an amount based on the factors 17 announced by the Supreme Court and the disciplinary rules 18 and I think that that should be it, if, in fact, we get to 19 an award and if, in fact, there is an award to Tricon, 20 that the attorneys' fees should bear some relationship to 21 the ultimate damage award. And with that, I think the 22 record is closed, subject to our right to provide 23 testimony from Mr. Matthews. 24 JUDGE BENTON: How much was the inspection 25 costs? I don't remember.</p>

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<p style="text-align: right;">10</p> <p>1 MS. LARSON: We didn't incur any.</p> <p>2 MR. DIAZ-ARRASTIA: We don't know because</p> <p>3 we didn't pay it.</p> <p>4 JUDGE BENTON: Right.</p> <p>5 MR. DIAZ-ARRASTIA: If you look at the</p> <p>6 documents that were submitted in the record, and these are</p> <p>7 Exhibits 24 and 28, just with regard to the replacement</p> <p>8 sale, KP, all that it says is in the inspection costs were</p> <p>9 zero and in the KP contract the inspection costs was</p> <p>10 supposed to be divided 50-50 between buyer and seller, but</p> <p>11 the supplier paid all of them because that's customary.</p> <p>12 So we don't know what the inspection costs were because we</p> <p>13 did not pay them.</p> <p>14 JUDGE BENTON: Yeah.</p> <p>15 MR. DIAZ-ARRASTIA: The -- if I could</p> <p>16 address a couple of things, with regard to cross-examining</p> <p>17 Mr. Matthews on the issue of inspection costs, this was</p> <p>18 their cross-examination. That was -- I did not ask any</p> <p>19 questions during Mr. Matthews' deposition.</p> <p>20 JUDGE BENTON: That's -- I mean, with</p> <p>21 respect to that, I mean, that's a little -- whether you</p> <p>22 call -- it's your offer. They don't have an offer.</p> <p>23 MR. DIAZ-ARRASTIA: I understand.</p> <p>24 JUDGE BENTON: Yeah.</p> <p>25 MR. DIAZ-ARRASTIA: I understand, but, like</p>	<p style="text-align: right;">12</p> <p>1 from his deposition and that -- that's it, so --</p> <p>2 JUDGE BENTON: All right.</p> <p>3 MR. DIAZ-ARRASTIA: And I'm sorry. And my</p> <p>4 only response to that is Mr. Matthews, as an expert</p> <p>5 witness and he was designated as an expert witness, is</p> <p>6 entitled to rely on hearsay information if experts would</p> <p>7 rely on that.</p> <p>8 The task that was put to him was just</p> <p>9 calculate what the damages are and he understood that one</p> <p>10 of the things that he had to do was reduce from the</p> <p>11 damages those costs that were avoided by reason of not</p> <p>12 making the sale to Vinmar. He had to find out what those</p> <p>13 were, and the reason that he made the decision not to</p> <p>14 include inspection costs as a cost that was avoided is</p> <p>15 because he was informed that it was the norm in the</p> <p>16 industry that the supplier would pick those up, and,</p> <p>17 therefore, was not a cost that would have been avoided.</p> <p>18 Although the contract said Tricon would pay the costs, the</p> <p>19 reality is that their supplier would pick that up. It's</p> <p>20 normally done and, in fact, is what was done in the</p> <p>21 replacement sale.</p> <p>22 JUDGE BENTON: Okay. Understood. So go</p> <p>23 ahead, Mr. Lee.</p> <p>24 MR. LEE: I just want to make one comment</p> <p>25 to that. There's no evidence in the record that Tricon</p>
<p style="text-align: right;">11</p> <p>1 I said, the only reason that I brought it up is because it</p> <p>2 was specifically raised in their papers saying that</p> <p>3 Mr. Matthews did not discuss that.</p> <p>4 JUDGE BENTON: Yeah.</p> <p>5 MR. DIAZ-ARRASTIA: They knew why he did</p> <p>6 not discuss that and I wanted to tell the Panel why that</p> <p>7 was the case.</p> <p>8 JUDGE BENTON: Fair enough. Tell you what</p> <p>9 we'll do, then. We'll permit the offer of the evidence</p> <p>10 and we'll permit you the opportunity, Mr. Lee, to further</p> <p>11 supplement. Although it does --</p> <p>12 JUDGE DAVIDSON: If you didn't pay it --</p> <p>13 JUDGE BENTON: That seems to be</p> <p>14 inconsequential.</p> <p>15 JUDGE DAVIDSON: I don't see receiving it</p> <p>16 into evidence increases or decreases your award.</p> <p>17 JUDGE BENTON: Well, they make some</p> <p>18 argument in their papers about the consequences of the</p> <p>19 reliability or something about it. I don't fully</p> <p>20 remember, but I do think, sitting here, it's going to be</p> <p>21 inconsequential, but since this is our last time to be</p> <p>22 together, just tell us when you'll have that</p> <p>23 supplemental --</p> <p>24 MR. LEE: I'll submit it tomorrow and it</p> <p>25 will be very short. I'll just submit a couple of pages</p>	<p style="text-align: right;">13</p> <p>1 did, in fact, pay or that KP Chem paid the inspection</p> <p>2 costs on the -- the MX that Tricon supplied to KP Chem.</p> <p>3 So, I mean, that -- there's no evidence of that either.</p> <p>4 MR. DIAZ-ARRASTIA: KP Chem didn't pay it.</p> <p>5 The supplier paid it. There is evidence on the record J &</p> <p>6 J, the supplier, paid it and Exhibit 28 is the J & J</p> <p>7 contract that says that they would pay the inspection</p> <p>8 costs. So there is evidence that the supplier paid the</p> <p>9 inspection costs in the replacement sale. I'm sorry.</p> <p>10 Exhibit 24 is the contract that says J & J, the supplier</p> <p>11 for the KP sale, would pay the inspection costs and</p> <p>12 Exhibit 28 is Tricon's internal control about what were</p> <p>13 the costs that it had in connection with that sale and it</p> <p>14 said that inspection costs was zero because Tricon didn't</p> <p>15 pay it. J & J paid it.</p> <p>16 JUDGE BENTON: Okay. With that, Tricon</p> <p>17 announces that it does hereby completely rests on all</p> <p>18 evidentiary issues. Correct?</p> <p>19 MR. DIAZ-ARRASTIA: That is correct, your</p> <p>20 Honor.</p> <p>21 JUDGE BENTON: Okay. And, likewise,</p> <p>22 Vinmar, subject to the supplement pertaining to</p> <p>23 Mr. Matthews which we should expect to receive by the</p> <p>24 close of business tomorrow, subject to that, Vinmar</p> <p>25 likewise announces that it hereby rests on all evidentiary</p>

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<p style="text-align: right;">14</p> <p>1 issues. Correct, Mr. Lee?</p> <p>2 JUDGE WOOD: An electronic submission is</p> <p>3 sufficient for me. Thank you.</p> <p>4 MR. LEE: Okay.</p> <p>5 JUDGE DAVIDSON: The same.</p> <p>6 MR. LEE: Correct, and I will send it by</p> <p>7 e-mail and it will be very brief.</p> <p>8 JUDGE WOOD: And we'll make sure that the</p> <p>9 court reporter's included on that e-mail so that he gets a</p> <p>10 copy.</p> <p>11 JUDGE BENTON: All right. I don't think</p> <p>12 that we have any questions on the attorneys' fees, but in</p> <p>13 any event, Mr. Diaz-Arrastia, how much time would you like</p> <p>14 to present your closing and how much time do you think</p> <p>15 you'll want for rebuttal?</p> <p>16 MR. DIAZ-ARRASTIA: My closing is going to</p> <p>17 be brief, unless the Panel has questions or they want to</p> <p>18 hold it until later. I'd say ten or 15 minutes, at the</p> <p>19 most.</p> <p>20 JUDGE BENTON: Okay.</p> <p>21 JUDGE WOOD: Well, then, let me ask if you</p> <p>22 would address contract formation, liability and damages.</p> <p>23 I'm sure you probably have it broken down that way, too.</p> <p>24 MR. DIAZ-ARRASTIA: Some of the issues that</p> <p>25 I want to touch upon deal with those questions.</p>	<p style="text-align: right;">16</p> <p>1 this deal until well after the deal was made.</p> <p>2 In Vinmar's post hearing brief, they point</p> <p>3 to Exhibit 11, Joint Exhibit 11, which are some IMs</p> <p>4 between Mr. Leyman and Mr. Wilson, and in particular they</p> <p>5 point to some IMs at 9:34 in the morning and then again at</p> <p>6 10:00 o'clock, the 9:34 talking about FOB HTC Corpus,</p> <p>7 which is Houston, Texas City, Corpus, and at 10:00 o'clock</p> <p>8 Mr. Leyman talking about a second MX seller for a first</p> <p>9 half of August delivery. The -- they are trying to</p> <p>10 suggest that this means that U.S. origin was being</p> <p>11 discussed from the beginning.</p> <p>12 The first thing that I would point out is</p> <p>13 that these discussions are a good two, two and a half</p> <p>14 hours, before the deal was made, which was made at about</p> <p>15 noon. Mr. Leyman clearly stated in his testimony that was</p> <p>16 presented to the Panel, as is evident from the IMs</p> <p>17 themselves, that these were indications that were</p> <p>18 presented to Mr. Wilson and, as you will recall, an</p> <p>19 indication is a thought, a proposal. It is not a binding</p> <p>20 offer.</p> <p>21 They are indications that were proposed to</p> <p>22 Mr. Wilson. One of them was for an FOB sale. This was a</p> <p>23 CFR sale and Mr. Leyman's testimony was very clear that</p> <p>24 Mr. Wilson had no interest in any FOB sale. Second, it</p> <p>25 was a proposal for delivery in the first half of August</p>
<p style="text-align: right;">15</p> <p>1 JUDGE WOOD: Thank you.</p> <p>2 MR. DIAZ-ARRASTIA: If there's specific</p> <p>3 issues that your Honor has or specific questions, I would</p> <p>4 be very pleased to address that.</p> <p>5 JUDGE WOOD: No specifics.</p> <p>6 JUDGE BENTON: Okay. I'll tell you what</p> <p>7 we'll do, because I doubt it's rather -- it's likely that</p> <p>8 both sides will be very brief. We'll just let you go and</p> <p>9 we'll interrupt you as we see fit.</p> <p>10 MR. DIAZ-ARRASTIA: Okay. That seems fair.</p> <p>11 JUDGE BENTON: You may proceed.</p> <p>12 MR. DIAZ-ARRASTIA: And, like I said, I</p> <p>13 don't really want to rehash the whole case. I think we</p> <p>14 have gone over it many times. However, there are some</p> <p>15 statements that were made in Vinmar's post hearing brief</p> <p>16 on the state of the record that I believe are just wrong</p> <p>17 and go to some of the issues that Judge Wood asked about</p> <p>18 and I would like to address those briefly, just as sort of</p> <p>19 a response to that.</p> <p>20 The first matter that I want to talk to has</p> <p>21 to do with the issue of U.S. origin that I think is an</p> <p>22 important issue here. I just want to reiterate that the</p> <p>23 record is very clear that there is no evidence in this</p> <p>24 record other than Mr. Wilson's own unsupported testimony</p> <p>25 that U.S. origin was ever discussed in connection with</p>	<p style="text-align: right;">17</p> <p>1 and Mr. Leyman's testimony was again very clear that</p> <p>2 Mr. Wilson had no interest in a first half of August</p> <p>3 delivery. He needed first half of September delivery and,</p> <p>4 for that reason, neither of those indications were</p> <p>5 pursued. Mr. Wilson had no interest in them and he would</p> <p>6 not bid against those indications.</p> <p>7 And if we can take a look at Mr. Leyman's</p> <p>8 testimony at the hearing, it's Pages 272 to 273 of the</p> <p>9 hearing transcript, Page 272 beginning with Line 14.</p> <p>10 We're going to be going to Line 11, Line 11, Page 272.</p> <p>11 Okay. And here Mr. Leyman's being questioned about the</p> <p>12 exhibit that's Exhibit 11. He is asked: "Where you say,</p> <p>13 'Second MX seller asking if buyer would purchase'" -- this</p> <p>14 is at 10:00 o'clock, two hours before the deal was made,</p> <p>15 now dealing with the second indication, and Mr. Leyman</p> <p>16 says: "That's an indication." The following question:</p> <p>17 "All right. And then you ask Mr. Wilson at 10:05 whether</p> <p>18 he has any bid. Correct?"</p> <p>19 Mr. Leyman says: "Yes."</p> <p>20 "Are you asking him if he wants to bid</p> <p>21 against this indication -- or make a bid against the</p> <p>22 indication for the CFR delivery," and Mr. Leyman's answer</p> <p>23 is very clear: "Yes. Prior to that, I spoke to Rick by</p> <p>24 telephone and he did not have any interest any longer in</p> <p>25 buying FOB the Gulf Coast. His preference was to buy</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">18</p> <p>1 something on a delivered CFR basis to either Korea or 2 Taiwan. He indicated he had two possible buyers and he 3 would prefer selling on a delivered basis." 4 If we could now go to Page 273, beginning 5 on Line 4, and the question is: "All right. And did 6 Tricon -- is this Mr. Lockwood? He also told you that it 7 would be loading out of the U.S. Gulf Coast, at least when 8 you reported to mister -- correct?" 9 And Mr. Leyman's response: "That was his 10 indication, that he can load barrels between first half 11 August out of the Gulf Coast and sell it on a delivery 12 basis to Asia. That was not acceptable to Mr. Wilson. He 13 indicated that it was -- that the timing was very 14 important, that he needed a guarantee of arrival of 15 September 15." 16 Question: "All right." 17 "So that offer was not pursued on that 18 basis." 19 So the record is actually very clear that 20 this discussion about a -- you know, indications about a 21 possible U.S.G. loading, whether FOB or the first half of 22 August, were indications specifically rejected by 23 Mr. Wilson and not pursued and all of these were two hours 24 before the deal was made, which is a lifetime in this 25 trading.</p>	<p style="text-align: right;">20</p> <p>1 is the origin of the product?" And I said, 'Most likely 2 U.S. Gulf, but I can't guarantee it since I am already 3 guaranteeing the first half window." 4 And this has been Mr. Lockwood's position 5 consistently throughout this entire proceeding, that it 6 was likely that he would supply U.S. Gulf material but he 7 couldn't guarantee it in order to also meet the first half 8 of September window, and a guarantee of U.S. origin is not 9 in the deal. Even Mr. Cofarn, Vinmar's own expert, 10 testified that, yes, it is well understood in the business 11 that "most likely" and "guaranteed" mean two completely 12 different things. 13 Vinmar's insistence that it had to be 14 guaranteed U.S. origin or they would not accept delivery 15 is a breach of the contract 16 JUDGE BENTON: Okay. But this testimony 17 really touches on the communications between Mr. Lockwood 18 and Mr. Leyman, and can you -- can you -- and you've 19 already talked about the communications between Dr. Wilson 20 and Mr. Leyman that happened two hours -- a lifetime in 21 the business, but can you -- can you touch on or remind us 22 what's in the record on communications between Wilson and 23 Leyman that firm up that Wilson has abandoned or 24 acquiesced on open origin? 25 MR. DIAZ-ARRASTIA: The -- the testimony</p>
<p style="text-align: right;">19</p> <p>1 In addition to that, it is very clear that 2 the discussion where Mr. Wilson asked after the deal was 3 made: "Well, where do you think you're going to supply 4 from," it is very clear from Mr. Lockwood's testimony that 5 the inquiry about, "Where do you think you're going to 6 load from" came after the deal was made. 7 And if we could take a look at Page 115 of 8 the hearing transcript, beginning on Line 15, well, there 9 he goes. Yeah, on Line 15, Mr. Lockwood said: "I had 10 accepted the firm bid as it was presented to me." 11 JUDGE BENTON: Can we back up so that we 12 can see the question that is asked? 13 MR. DIAZ-ARRASTIA: Oh, sure 14 JUDGE BENTON: Okay. Right. 15 MR. DIAZ-ARRASTIA: And then the question 16 was: "But after this discussion, at a time when you 17 believe that Mr. Leyman went to Dr. Wilson and talked to 18 him, Mr. Leyman came back to you and said, What is the 19 origin of the product? Correct?" 20 Mr. Lockwood said: "Let me correct. It 21 was before Ed had said everything was done. He had asked 22 me what the origin is. I had accepted the firm bid as it 23 was presented to me. He said: 'Okay. Let me call Rick 24 and tell him everything is done.' When he called Rick 25 Wilson, he came back to me then with the question, 'What</p>	<p style="text-align: right;">21</p> <p>1 from Mr. Leyman is first what we just saw a moment ago. 2 JUDGE BENTON: The two hours -- 3 MR. DIAZ-ARRASTIA: That the discussion 4 from two hours ago, Mr. Wilson absolutely rejected that 5 and abandoned that as a concept. Subsequent to that, 6 there was testimony from Mr. Leyman that the origin of the 7 product was just not discussed at all between him and 8 Mr. Wilson on the discussions that led to the deal that's 9 the subject of this claim. 10 JUDGE BENTON: Okay. So they had talked 11 two hours earlier and so then -- so maybe two hours later 12 they have another discussion and they are not touching on 13 origin at all? 14 MR. DIAZ-ARRASTIA: That is what Mr. -- 15 that is Mr. Leyman's testimony. Mr. Leyman's testimony 16 was very clear that he said there was no discussion about 17 origin at all before the deal was made. What page is 18 that? 19 MS. LARSON: 283, 282. 20 JUDGE BENTON: It appears to be 283. 21 MR. DIAZ-ARRASTIA: Okay. 22 Yes. And Mr. Wilson is -- he's being 23 questioned about that. Mr. Leyman is being questioned 24 about that, and so it's part of the discussion of the date 25 for declaration of discharge, and if you'll look at</p>

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<p style="text-align: right;">22</p> <p>1 Line 23 at Page 283, Mr. Leyman is saying -- well, the 2 question is: "All right. And what was the concern? That 3 it would be hard to get it through the Panama Canal in 4 time?"</p> <p>5 And the answer is: "No. That was part of 6 the discussion in declaring the date for the discharge 7 port. After we concluded the transaction -- after we 8 concluded the transaction, Mr. Wilson asked me what is the 9 origin of the xylenes, and this was after I had recapped 10 and summarized all the terms and conditions. I 11 subsequently called Brad, also recapped the terms and 12 conditions, and asked him that question. And his response 13 was, 'The origin was most likely U.S. original.' I in 14 turn called back Rick, passed that information on to him, 15 and then we got into a discussion of when to declare the 16 discharge port."</p> <p>17 So Mr. Leyman's testimony in that regard is 18 completely consistent with Mr. Lockwood's testimony. The 19 only person who has ever stated that Mr. Leyman was told 20 that U.S. origin was a requirement of the deal is 21 Mr. Wilson himself. He said that in his testimony, but 22 you have to consider that Mr. Wilson also received three 23 different confirms from MOAB, Mr. Leyman's company, none 24 of which mention the origin of the material. 25 Mr. Wilson asked that they be modified</p>	<p style="text-align: right;">24</p> <p>1 days.</p> <p>2 JUDGE BENTON: Okay.</p> <p>3 MR. DIAZ-ARRASTIA: In Vinmar's post 4 hearing brief they say that Mr. Anaya asked Mr. Wilson 5 what is the loading port, but as you can see, that is not 6 at all the question. The question is what is origin.</p> <p>7 There was testimony at the hearing from 8 everybody that "origin" and "loading port" mean two 9 completely different things. Even Mr. Cofarn, Vinmar's 10 own expert, had to admit that, in the industry, "origin" 11 and "loading" are not the same concept. They are 12 completely different concepts and the reason is because 13 you can have foreign origin MX put in a bonded tank in 14 Texas City and you can load it in Texas City but it's not 15 of U.S. origin. It's not of Texas City origin, and that 16 was thoroughly explained in the record. Everybody agreed 17 on that. Even Mr. Wilson himself said, you know, that 18 could happen, although he said he wasn't aware of it, but 19 everybody else -- both expert witnesses agreed on that. 20 Both expert witnesses agreed that it would make no sense 21 for anybody in this industry to use the word "origin" when 22 they really meant "load". So two days after the deal 23 Mr. Wilson specifically asked what's the origin, and he 24 gives the same answer that Mr. Lockwood gave. "We don't 25 know yet. We will know when" --</p>
<p style="text-align: right;">23</p> <p>1 because he wanted the payment terms modified, and that was 2 done. Mr. Wilson also testified that he noticed that 3 there was a mistake in the price term, which was also 4 correct. So through three different confirms, no mention 5 of U.S. origin. In addition to that, he then passes -- he 6 receives the Tricon letter from Mr. Lockwood that also 7 does not mention it, passes that on to Mr. Pascu.</p> <p>8 He is asked by Mr. Anaya what is the origin 9 of this product and Mr. Wilson's response -- and this is 10 going to Exhibit No. 8. Yes, he is asked by Mr. Anaya: 11 "You know, what is the port of origin of this product?" 12 And Mr. Wilson's response on July 25th is, "Gray origin. 13 We will know when we declare discharge port, most likely 14 U.S. Gulf." The same thing that Mr. Lockwood said, the 15 same thing that Mr. Leyman said. Now, this is also 16 important because this is one of the places where Vinmar's 17 post hearing brief contains something that's just wrong.</p> <p>18 JUDGE BENTON: Just a second. And this is 19 three days after the --</p> <p>20 MR. DIAZ-ARRASTIA: This is --</p> <p>21 JUDGE BENTON: Two days.</p> <p>22 MR. DIAZ-ARRASTIA: Well, Mr. Anaya makes 23 the question two days later.</p> <p>24 JUDGE BENTON: The answer is three days?</p> <p>25 MR. DIAZ-ARRASTIA: The answer is three</p>	<p style="text-align: right;">25</p> <p>1 JUDGE WOOD: Hang on just a minute.</p> <p>2 JUDGE BENTON: Hang on. Excuse us, please.</p> <p>3 JUDGE WOOD: Thank you.</p> <p>4 MR. DIAZ-ARRASTIA: That's fine.</p> <p>5 What he said, he -- two days after the 6 transaction is finished or the deal was made, the 7 transaction was not finished because additional terms were 8 being negotiated, but two days later he's given the 9 specific question, "What's the port of origin," and he 10 says he won't know until we declare discharge port. Most 11 likely but not guarantee U.S., exactly the answer that was 12 given by Mr. Lockwood and exactly what Mr. Leyman said in 13 his testimony, and Mr. Anaya's question was about the 14 origin, not about the load. The idea that the discussion 15 between Mr. Wilson and Mr. Anaya refer only to where would 16 the material be loaded from is obviously something that 17 they came up with after the fact to try to justify their 18 breach.</p> <p>19 I want to talk a little bit about one issue 20 that came up on contract formation and this has to do with 21 the signature lines. And, as you will recall, there was 22 a -- the three MOAB confirms, which we believe created a 23 binding agreement. If they don't create a binding 24 agreement, we still have under UCC 2207 an agreement is 25 made with a Tricon letter, but we believe it's a binding</p>

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<p style="text-align: right;">26</p> <p>1 agreement and the Tricon letter is a proposal to modify 2 that agreement which can be done without consideration 3 under the UCC.</p> <p>4 The Tricon letter had spaces at the end for 5 signatures. Mr. Lockwood's testimony was that's just 6 something that the -- their system automatically 7 generates, that in spot deals of this kind, those pages -- 8 those signatures are never filled out. They are never 9 signed with somebody taking a piece of paper to it.</p> <p>10 Vinmar made a suggestion in its post 11 hearing brief that Steve Simpson, Tricon's expert, gave 12 testimony that it is not customary in the industry to have 13 signatures on paper that is passed like the Tricon letter 14 and that if there were signatures on the piece of paper 15 you would expect them to be signed. That is actually the 16 exact opposite of what Mr. Simpson's testimony was.</p> <p>17 First, let me point out Mr. Simpson's 18 report which is in the record, and specifically 19 Paragraph 6 of this report. He specifically addresses the 20 question of the signature spaces. I'm sorry. It is 21 Exhibit -- Tricon Exhibit 36, Paragraph 6. If you will 22 see the last sentence there, he says these confirming 23 letters. Can you highlight that part, Tracy? It's the 24 last sentence on Paragraph 6, these confirming letters: 25 "These confirming letters frequently contain lines for</p>	<p style="text-align: right;">28</p> <p>1 to say that that's probably true. It is some evidence of 2 that, but it's not conclusive evidence of it. In this 3 record there is overwhelming evidence that, for a spot 4 deal like this one in this industry, it was not 5 uncommon -- in fact, it frequently happened -- that paper 6 that was passed contained signature lines but that it was 7 not customary that they actually be signed.</p> <p>8 The evidence is that the intention of the 9 parties in this case was to be bound even if the signature 10 lines were not filled in. Now, certainly, when a proposal 11 for additional terms is made, it is necessary that the 12 opposing party assent to those additional terms, but under 13 the UCC, that assent can be given in any reasonable way, 14 and in this case we have the e-mail from Mr. Pascu saying, 15 "Here are my comments. We will revert soon with our 16 purchase order." Even Mr. Cofarn, their own expert, 17 testified that you would not issue a purchase order if you 18 did not believe that there was a deal.</p> <p>19 Why don't we take a look at Page 532 of the 20 hearing transcript, beginning at Line 13, and this is from 21 Mr. Cofarn's deposition. Beginning on Line 13 there is a 22 question by me: "Where Mr. Pascu is telling" -- yeah: 23 "Where Mr. Pascu is telling Mr. Rajevac, 'We shall revert 24 soon with our purchase order for your review.' Do you see 25 that, sir?"</p>
<p style="text-align: right;">27</p> <p>1 signatures of the parties, but it is very unusual for 2 these confirming letters to ever be signed by either party 3 unless it is a long-term contract which is not the case 4 here."</p> <p>5 Let's see what Mr. Simpson testified to 6 during the hearing, and if we can look at Page 482 of the 7 hearing transcript, 482, beginning at Line 4, and the 8 question is: "Okay. Now, let's take a look at the last 9 page of Exhibit No. 5," which was the Tricon letter. "Do 10 you see where there are spaces for signatures?" 11 "Yes, sir." 12 "And have you seen paper that is passed 13 that has spaces for signatures at the end?" 14 "Yes, sir." He has seen that in the 15 industry. 16 "Okay. And is it customary for these 17 additional terms to be signed or not to be signed?" 18 "In my view, it is customary that they not 19 be signed." So it is very clear that Mr. Simpson's 20 testimony is that, although there are signature spaces, it 21 is customary in the industry that those not be signed.</p> <p>22 Vinmar cites a number of cases in their 23 post hearing brief that says that the presence of 24 signature lines can be considered evidence that the 25 parties intended that those be filled in, and I will have</p>	<p style="text-align: right;">29</p> <p>1 And Mr. Cofarn says: "Yes." 2 "Back when you were trading, sir, would a 3 buyer send a purchase order if he thought there was no 4 deal?" 5 "Would a -- 6 "Would a buyer sell -- would a buyer send a 7 seller its purchase order if the buyer thought there was 8 no deal, if they were not going to buy?" And his question 9 is very clearly no.</p> <p>10 So it is very clear from Mr. Pascu's 11 e-mail -- and I can't remember what exhibit that was -- 12 that he accepted the additional terms. He made some 13 changes to the Tricon letter which Mr. Rajevac immediately 14 accepted, accepting only demurrage, which is not at issue 15 here. This is also very important because the only part 16 of the additional terms that's really important to this 17 case is the arbitration clause, because all of the basic 18 commercial terms were the same -- I'm sorry -- the 19 arbitration and the interest clauses. All of the other 20 basic commercial terms were the same. It is important the 21 purchase order that was prepared by Mr. Pascu contain 22 essentially the same arbitration clause.</p> <p>23 There is no doubt on this record that there 24 is plenty of evidence that Vinmar intended to accept the 25 Tricon letter and specifically intended to accept the</p>

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<p style="text-align: right;">30</p> <p>1 arbitration provisions of the Tricon letter. The idea 2 that the parties intended not to be bound until the 3 signatures were actually written with a pen to paper, it's 4 just not supported in this record. 5 I would like to just briefly say one more 6 thing regarding Mr. Rajevac. There is a suggestion made 7 that Mr. Rajevac intended not to comply with the contract 8 because he intended not to permit Vinmar to inspect the 9 material, which is the term in the contract, and 10 Mr. Rajevac just clearly did not say that. And let's take 11 a look at his testimony, which are on Page 335 and 336 of 12 the hearing transcript, and starting on Line 13, the 13 question was: "We may give you something of Asian 14 origin?" 15 And Mr. Rajevac's answer was: "Correct, in 16 this case if it was Asian origin we would be more than 17 happy to let Vinmar participate in the inspection. There 18 would have been plenty of time to do so." 19 "Okay." 20 "It was only deep sea cargo which would 21 likely -- in which case we would likely have to give them 22 already issued certificates of quality and quantity for 23 the xylene load." 24 So Mr. Rajevac's testimony -- and if you 25 recall, this was the e-mail on the 29th of July where</p>	<p style="text-align: right;">32</p> <p>1 In that connection, a case that is cited by 2 Vinmar in their brief is actually very helpful to Tricon's 3 position. This is the Islamic Republic of Iran against 4 Boeing case, and in that case, the Court makes very, very 5 clear that all that a seller need show in order to say, 6 "You know, we could make the sale on the contract that was 7 breached and we could have also made the replacement sale" 8 is enough evidence to show that both sales could have been 9 made. The evidence is here. The evidence is clear that 10 the price was going down. Even Mr. Wilson himself said 11 everybody had stopped buying. The buyers are hiding, if 12 you'll remember that testimony from Mr. Wilson. 13 What that meant is that somebody who has a 14 fixed price contract at a high price is going to have no 15 difficulty buying all of the MX that they can in order to 16 fulfill that contract and any other contract that they may 17 be able to -- to scrounge up. The replacement sale here, 18 the KP sale, was pursuant to a preexisting one-year 19 contract where KP had agreed back at the beginning of 2008 20 to accept 5,000 metric tons of -- you know, plus or minus 21 5 percent -- of MX every single month based upon the 22 average price for the preceding month, and that is the 23 reason that Vinmar was able to -- I'm sorry -- that Tricon 24 was able to find a replacement sale at all, because there 25 were no buyers.</p>
<p style="text-align: right;">31</p> <p>1 Mr. Rajevac very clearly stated that Asian origin might be 2 a way that Vinmar was -- that Tricon was going to fulfill 3 this contract, where he said, "We may give you a deep sea 4 cargo already in the water, but if you're not happy with 5 that, we might just give you an Asian origin cargo." With 6 an Asian origin cargo, which the contract clearly 7 permitted, there would have been plenty of time for Vinmar 8 to inspect or to be present at the inspection. If they 9 insisted on that, if they were not happy accepting a 10 certificate of inspection, they could have been present at 11 inspection, fulfilling all of the terms of the contract 12 with an Asian origin cargo. 13 The -- the final thing that I want to talk 14 about is just the idea of our damages, and Vinmar has 15 argued rather strongly that Tricon was not harmed in this 16 case. The evidence here is that we -- that just after 17 July 22nd, 2008, when this contract was made, the price of 18 MX went into a sustained and precipitous decline. The 19 evidence was by the end of the year the price had declined 20 some 62 percent. Vinmar's theory is that when you as a 21 seller have just nabbed a fixed price contract at today's 22 price and from that moment on the price begins to go down 23 at a significant rate, when your buyer breaches that 24 contract, you're not harmed at all. That's absurd. Of 25 course, you're harmed.</p>	<p style="text-align: right;">33</p> <p>1 But the suppliers were desperate to make 2 sales and Mr. Lockwood gave the testimony right at the end 3 of his direct examination that it would have been no 4 problem to find all the MX that you wanted. Suppliers 5 were desperate to make sales. Tricon could have sold the 6 Vinmar contract and it could have also sold the 7 preexisting contract with KP. There is no doubt about 8 that. There is plenty of evidence. There is no evidence 9 to the contrary. 10 What the Islamic Republic of Iran case is 11 cited for in Vinmar's brief is the proposition. As you 12 will recall, KP asked for a discount, for a reduction in 13 the volume on their contract, and it was given to them 14 because we had a long-term relationship with them. 15 Vinmar cites the Islamic Republic of Iran case with the 16 proposition that if we had to give Vinmar a reduction -- 17 I'm sorry -- if we had to give KP a reduction in volume, 18 then Vinmar also gets a credit for that. That is just not 19 the holding of that case at all, not even close to it. 20 What happened in the Islamic Republic of 21 Iran case is that Iran had bought airplanes from Boeing 22 and breached, didn't take delivery, and the evidence was 23 that the price that was given Iran was -- I think was a 24 certain number of millions of dollars subject to a 25 reduction by a credit memo. Then there was a replacement</p>

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<p style="text-align: right;">34</p> <p>1 sale which had the same structure and there was evidence 2 that that was common in aircraft sales where there was a 3 stated price, also subject to a reduction by a credit 4 memo. 5 In that case, Iran had argued, "Well, when 6 you calculate the price we were going to pay under the 7 contract, you have to reduce the credit memo from the 8 stated price, but when you go look at the replacement sale 9 you don't reduce the credit memo from the stated price," 10 and the Court just said, "No. Wait a minute. If both 11 contracts had a stated price subject to a credit, you do 12 the credit in both contracts." That's not the case here. 13 That's not the case here. 14 It is just not -- it doesn't say that if we 15 have to give a credit to the replacement sale we must also 16 extend it to Vinmar. What it does say is that if there is 17 evidence that both sales could have been made, as there 18 is, then we're entitled to the benefit of both sales, and 19 clearly we are. There is no doubt that Vinmar could have 20 made the Tricon -- that Tricon could have made the Vinmar 21 sale for which they had a binding contract and could have 22 also made the KP sale for which they also had a binding 23 contract. 24 Now, let's talk a little bit about what is 25 the proper measure of damages. The first thing is that</p>	<p style="text-align: right;">36</p> <p>1 money that would have been made -- that was made on the 2 replacement sale. That is our preferred measure of 3 damages. Under 2708 there is an alternative measure of 4 damages where you compare the money that would have been 5 made under the sale that -- contract that was breached to 6 the market price, to a theoretical sale at the market 7 price at the time and place of tender, and we presented 8 alternative measures of damages. Under 2708, our measure 9 of damages is slightly less. Tracy, what -- well, it's 10 slightly less. 11 JUDGE DAVIDSON: I would like the figure 12 that you claim. 13 MR. DIAZ-ARRASTIA: It's in the -- it's in 14 Mr. Matthews' report. It is his almost \$1.4 million, one 15 point -- 16 MS. LARSON: No. 17 MR. DIAZ-ARRASTIA: I'm sorry. Well -- but 18 that's before we put an interest on the -- 19 MS. LARSON: Before interest, yeah. 20 MR. DIAZ-ARRASTIA: It's in Mr. Matthews' 21 report. It's slightly less. 22 We believe that the 2706 report -- well, 23 first, the law, I believe, gives us, the Claimant, the 24 option about how to proceed, but more than that, I think 25 it is just because I think in order to be fully</p>
<p style="text-align: right;">35</p> <p>1 the profit that would have been made on the sale is just 2 not the measure of contracts provided -- well, the measure 3 of damages provided by the UCC. Frankly, I wish it was, 4 because as even Mr. Lee's own evidence demonstrated, the 5 profit that Tricon would have made had Vinmar performed 6 under a reasonable set of assumptions would have been 7 about \$1.8 million, which is more than the damages we're 8 asking for. Under the UCC, damages are calculated by 9 comparing the, you know, price under the -- you know, 10 money that would have been paid under the breached 11 contract to the money that was paid under the replacement 12 sale and the difference between the two are your damages 13 and that comes out to about \$1.6 million. The profit 14 would have been more. 15 I wished that lost profits was the measure 16 of damages, but it is not. The fact that a profit was 17 also made on the KP sale is irrelevant because we were 18 entitled to the benefit of both contracts that were 19 binding contracts. We could have made both sales. 20 Suppliers were desperate to make sales. There was plenty 21 of supply. People would have been very happy to sell at 22 almost any price. 23 There is a -- the UCC provides two 24 measures. Under 2706 you actually compare the money that 25 would have been made under the breach in contract to the</p>	<p style="text-align: right;">37</p> <p>1 compensated you need to take a look at the difference 2 between what we would have made had Vinmar performed and 3 what -- and the best that we were able to do under the 4 circumstances. 5 There is a market price reflected by plats 6 and that's what we were -- what we used in the 7 calculation, but there was also plenty of evidence that, 8 although certainly there were some sales of MX going on in 9 the period of time of August and September 2008, buyers 10 were extremely difficult to find, and although some prices 11 were being reported, the reality of the situation is that 12 most people who wanted to sell weren't able to. 13 The only way that we were able to match a 14 sale was by looking at a sale that was already made, 15 already contracted for, and even there, showing how hard 16 it was to find buyers, we had to reduce the volume. So 17 under those circumstances, the market price doesn't really 18 reflect our damages. A better reflection of our damages 19 is what is the best thing that we were actually able to 20 do, and that is why we believe the 2706 measure is a 21 better measure of damages. 22 That is really what I have as far as my 23 closing, but if you have additional questions about 24 contract formation or any other issue in the case, I would 25 be very happy to address them.</p>

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<p style="text-align: right;">38</p> <p>1 JUDGE BENTON: Judge Wood?</p> <p>2 JUDGE WOOD: No questions</p> <p>3 JUDGE BENTON: Judge Davidson?</p> <p>4 JUDGE DAVIDSON: No questions.</p> <p>5 JUDGE BENTON: All right. Before we hear</p> <p>6 from you, Mr. Lee, how about a five-minute restroom break.</p> <p>7 MR. LEE: You've read my mind. Thank you.</p> <p>8 JUDGE BENTON: Okay. A short break. Off</p> <p>9 the record.</p> <p>10 (Recess from 10:23:05 a.m. to 10:33:55</p> <p>11 a.m.)</p> <p>12 JUDGE BENTON: Mr. Lee, are you ready, sir?</p> <p>13 MR. LEE: Yes.</p> <p>14 JUDGE BENTON: Mr. Diaz-Arrastia, are you</p> <p>15 ready?</p> <p>16 MR. DIAZ-ARRASTIA: Yes.</p> <p>17 JUDGE BENTON: All right. We are back on</p> <p>18 the record, and, Mr. Lee, you may proceed.</p> <p>19 MR. LEE: Thank you. Let me apologize in</p> <p>20 advance that the change in weather is -- I've got some</p> <p>21 allergies, but I'm going to do my best.</p> <p>22 The -- I'm going to address -- I try to</p> <p>23 address four main points: Jurisdiction, the issue of</p> <p>24 mutual assent, mutual intent to be bound, and the damages,</p> <p>25 and we'll jump around a little bit and maybe pick up a few</p>	<p style="text-align: right;">40</p> <p>1 this morning. Mr. Rajevac's testimony was, when I asked</p> <p>2 him pointblank, "Did you intend to allow Vinmar to inspect</p> <p>3 the product," he said no. And his answer there was</p> <p>4 instructive and interesting when you think about this</p> <p>5 whole U.S. origin issue, which is what this case comes</p> <p>6 down to in a lot of ways. But he went on with this long</p> <p>7 answer about the discharge, declaration date and certainly</p> <p>8 it seemed from his answer that he was expecting to ship</p> <p>9 this product from the United States, and that testimony's</p> <p>10 at Page 333 and 334 of the record where he talks about the</p> <p>11 fact that there's a minimum of 35 days of sailing time</p> <p>12 between the U.S. Gulf and Asia, and if you really want to</p> <p>13 inspect it, then you need to change the discharge date and</p> <p>14 there's a lot of testimony from Mr. Rajevac about his</p> <p>15 understanding that this might be coming from the U.S.</p> <p>16 JUDGE DAVIDSON: It was shipped from the</p> <p>17 U.S. Wasn't it?</p> <p>18 MR. LEE: No. There was no -- remember,</p> <p>19 there was no shipment in this case.</p> <p>20 JUDGE DAVIDSON: But it was supposed to be</p> <p>21 shipped -- it was USG.</p> <p>22 MR. LEE: It was supposed to be shipped</p> <p>23 from the United States, yes.</p> <p>24 JUDGE DAVIDSON: Right. That's clear in</p> <p>25 the record. Nobody disputes that.</p>
<p style="text-align: right;">39</p> <p>1 things that counsel said this morning, but I think the</p> <p>2 first point I want to make, if you sort of think about the</p> <p>3 record and what we've seen in this case, what's -- what's</p> <p>4 really clear is that Tricon really wants to say there was</p> <p>5 a deal, but they only want to do it on their terms. It's</p> <p>6 a deal only on their terms. In fact, this morning we</p> <p>7 heard that even after the broker confirmation came out,</p> <p>8 the transaction wasn't finalized. There was still</p> <p>9 negotiation.</p> <p>10 They don't want to commit to anything. Is</p> <p>11 it the confirm? Is it the sales contract? I asked</p> <p>12 Mr. Lockwood, the sales representative, and the</p> <p>13 representative for Tricon at the hearing, "What -- what's</p> <p>14 the contract that you're asking to be enforced?" He</p> <p>15 wouldn't answer it. He refused to answer it. At the end</p> <p>16 of it he said, "It's whatever you want it to be, whichever</p> <p>17 one you prefer." Well, that doesn't get them there in</p> <p>18 this case because we have a jurisdictional issue. It has</p> <p>19 to be something other than the confirm, but Mr. Lockwood</p> <p>20 wouldn't agree to that.</p> <p>21 Is it a signature or is it not a signature?</p> <p>22 We have signature blanks on the agreement. They claim</p> <p>23 that they're meaningless, they weren't signed, nobody ever</p> <p>24 signed them. They're there. They're there for a reason,</p> <p>25 and if you -- you know, the inspection, we -- that came up</p>	<p style="text-align: right;">41</p> <p>1 MR. LEE: And that was part of the</p> <p>2 contract.</p> <p>3 JUDGE DAVIDSON: Okay.</p> <p>4 MR. LEE: But if I -- let me deal with the</p> <p>5 arbitration and the jurisdiction issue at the outset,</p> <p>6 which is, if you -- Tricon has now made it very clear in</p> <p>7 their brief. They say that the broker confirmation is an</p> <p>8 enforceable contract. That's what they say. We know the</p> <p>9 broker confirmation does not have an arbitration</p> <p>10 agreement. It's undisputed and we can all look at the</p> <p>11 document itself, and there's also testimony in the record</p> <p>12 from the witnesses on the deal that arbitration was never</p> <p>13 discussed or agreed to. So under that notion the Panel</p> <p>14 cannot have jurisdiction; there is no arbitration</p> <p>15 agreement; it was not discussed; it was not agreed to and</p> <p>16 it's not contained in the broker confirmation.</p> <p>17 Tricon advances one argument to try to get</p> <p>18 jurisdiction in this case, and that is that under 2209 of</p> <p>19 the USC -- UCC, the contract was modified by the sales</p> <p>20 contract. That's a brand new argument, by the way. It's</p> <p>21 not in their Statement of Claim. They argue a number of</p> <p>22 things in the Statement of Claim. They reference a number</p> <p>23 of UCC provisions. Not once did they mention modification</p> <p>24 under 2209, but the evidence on modification and what the</p> <p>25 law says is a modification works just like a contract.</p>

11 (Pages 38 to 41)

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<p style="text-align: right;">42</p> <p>1 You have to have offer and acceptance. An acceptance has 2 to be a definite, seizable expression of assent to the 3 terms. 4 The only evidence that they have offered in 5 support of that is Mr. Pascu's e-mail, which I'll -- I'll 6 put up on the board in a minute, but Mr. Pascu's e-mail 7 says, "Here are my comments to your sales contract. We 8 will send a purchase order for your review." Not a single 9 word in that e-mail about -- no word of acceptance, no 10 signature on the document, no statement that we accept the 11 sales contract, and instead what he says is, "I'm sending 12 you a purchase order." 13 JUDGE BENTON: So we can't infer from that 14 that that's acceptance of the terms of the Tricon letter? 15 MR. LEE: Not based on the language, your 16 Honor. The language of the e-mail -- and can -- why don't 17 we put that up there. It's slide 10. Do you mind if I 18 stand up every once in a while? 19 JUDGE BENTON: Sure. 20 MR. LEE: What Mr. Pascu says -- and, by 21 the way, Mr. Pascu did not negotiate the deal -- 22 JUDGE BENTON: Sure. 23 MR. LEE: -- and was not in any way 24 involved in that. 25 The signature blanks on the contract itself</p>	<p style="text-align: right;">44</p> <p>1 signature, which the sales contract required a signature. 2 There are no signatures from either Mr. Lockwood or 3 Dr. Wilson. So for both reasons, even if you were to 4 conclude that that document could rise to the level of a 5 acceptance, you still have the signature issue, which I'll 6 come to in just a second. 7 Let me deal with this mutual assent issue 8 and -- because I think that's really where things start. 9 Was there an agreement between these parties to purchase 10 mixed xylenes? Certainly, we agree that there were a 11 number of things that the parties did agree to. I mean, 12 there's no question about the fact that Dr. Wilson had 13 given Ed Leyman, the broker, authority to make a purchase 14 on certain terms and was told by Mr. Leyman that those 15 terms had been accepted by Tricon, but there's a key 16 missing term from our perspective and from Mr. Wilson's 17 testimony, and that is, our requirement and our firm bid 18 was U.S. origin, mixed xylenes. 19 Contract law is clear that in order to have 20 a contract you have to have mutual assent. The parties 21 must agree on the essential terms. The testimony also is 22 clear that a broker like Mr. Leyman cannot match a firm 23 bid with a firm offer unless those terms are identical and 24 all the witnesses have said that and so did Mr. Simpson, 25 their expert, and this is an excerpt from his testimony at</p>
<p style="text-align: right;">43</p> <p>1 specifically identified Rick Wilson and Brad Lockwood as 2 the signatories, but what Mr. Pascu said is: "Please find 3 enclosed our comments on your sales confirmation." Now, 4 those comments were several handwritten scratches on the 5 sales letter, the sales contract that Tricon had sent. He 6 doesn't say, "We accept your sales contract. We accept 7 all other terms in the sales contract." He says: "Here 8 are our comments. And, oh, by the way, I'm going to send 9 you a purchase order for your review. So I'm sending you 10 my terms which will be forthcoming." 11 Now, he never sends those purchase 12 orders -- that purchase order because we found out that 13 there never was mutual assent. Mr. Wilson -- Dr. Wilson 14 discovered between this date and before the purchase order 15 was ever sent that, "Wait a minute. We don't have mutual 16 understanding on the key term of the deal," which is U.S. 17 origin MX, but this e-mail does not use any acceptance 18 language. It doesn't say, "We -- we agree with it. We 19 accept it. I sign it." It simply says, "Here are some 20 comments. We will send you a purchase order for your 21 review," and then he goes on to ask some questions and ask 22 for this prompt feedback. 23 So that document is not acceptance, and on 24 top of that, your Honor, there are cases that talk about 25 the -- the most obvious manifestation of acceptance is a</p>	<p style="text-align: right;">45</p> <p>1 Page 495, Lines 1 through 12. We asked him -- I asked 2 him: "If you -- if you say in your firm bid, 'This is 3 what I want,' and the firm offer on the other side doesn't 4 match the firm bid, you don't have a deal, do you?" 5 He said: "Probably wouldn't." 6 And I said, well: "The broker shouldn't 7 put the two parties together like that. Correct?" 8 Answer: "He probably wouldn't." 9 "And if he does, he exceeded his authority, 10 did he not?" 11 Answer: "He did." 12 The testimony from the traders, Dr. Wilson 13 and Mr. Lockwood, confirm there is no deal. Mr. Wilson 14 said at Page 397: "Mr. Leyman had specific instructions 15 to buy U.S. origin material only on my behalf," and he 16 says that several times throughout his testimony, that he 17 authorized Mr. Leyman to purchase U.S. origin MX and U.S. 18 origin MX only. And Mr. Lockwood said at Page 110 that he 19 didn't guarantee U.S. origin and he doesn't believe that 20 that's a term of the deal. 21 So if you accept the testimony of 22 Dr. Wilson and the testimony of Mr. Lockwood, there's no 23 mutual assent because Mr. -- Dr. Wilson made it clear it 24 was U.S. origin mixed xylenes. That's what Vinmar 25 required.</p>

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<p style="text-align: right;">46</p> <p>1 JUDGE DAVIDSON: Didn't Dr. Wilson testify 2 that the fact that he didn't bring this up in any of the 3 ongoing discussions on the correction of the price, you 4 know, the continuing discussion on terms, was his mistake, 5 that it was a mistake that he made? 6 MR. LEE: He said a couple of things about 7 that, your Honor. He said -- 8 JUDGE DAVIDSON: But didn't he say that? 9 MR. LEE: Ultimately, he said, "Maybe I 10 should have caught it sooner." He said it was MOAB, 11 Mr. Leyman's mistake. 12 He also, though, did testify that he did 13 not expect the confirmation to contain a statement about 14 origin and he also said that in the contract documentation 15 he didn't expect to see anything about origin until Tricon 16 had selected the specific port. He had given testimony 17 that Tricon did not want to agree to a specific port in 18 the United States. 19 JUDGE DAVIDSON: So to make it clear, if I 20 do a search of Dr. Wilson's testimony, it will not say 21 that -- the word "mistake" will not appear? 22 MR. LEE: No, your Honor. He did -- he did 23 at one point say -- 24 JUDGE DAVIDSON: "Mines"? 25 MR. LEE: -- "I made a mistake, too. I</p>	<p style="text-align: right;">48</p> <p>1 without the benefit of any notes. He does so without the 2 benefit of any tape recordings, although he had told 3 Dr. Wilson and Dr. Wilson testified that one of the 4 reasons he used Mr. Leyman in the first place is because 5 he tape recorded conversations. Those have disappeared. 6 We don't have any notes from Mr. Leyman about what he did 7 and what terms he authorized. We have some Instant 8 Messages early on in the day, and those are clearly 9 discussions about product originating in the United 10 States. 11 There's a firm bid, not just indications. 12 If you go back and look at Joint Exhibit 11, the very 13 first offer that's made to Vinmar is, in fact, a firm bid 14 for product leaving from Corpus, Houston or Texas City, 15 and all of the discussions in those IMs are based on U.S. 16 origin product. 17 JUDGE DAVIDSON: Mr. Diaz-Arrastia argued, 18 as I understood it, that FOB or shipping point is 19 different from origin and that the emphasis was being 20 shipped from the United States and not being -- not having 21 origin in the United States. Do you remember him arguing 22 that? 23 MR. LEE: I do. 24 JUDGE DAVIDSON: Response? 25 MR. LEE: I do. Mr. -- Dr. Wilson's</p>
<p style="text-align: right;">47</p> <p>1 should have caught it sooner." 2 JUDGE DAVIDSON: Did he say "too"? 3 MR. LEE: He said -- and then he corrected 4 that answer and said it was really Tricon's mistake, 5 actually, and I'll find that testimony. But I -- he did 6 say that he made a mistake, that he should have caught it 7 sooner. We'll concede that, but he also in that same 8 answer corrected himself and said it was Vinmar's 9 mistake -- I mean, Tricon's mistake. 10 But it doesn't change, your Honor, the fact 11 that at the time that the deal was negotiated -- and, by 12 the way, these negotiations, as we all know, went entirely 13 through Mr. Leyman. He's the only person that 14 communicated with both parties, and the testimony from 15 Dr. Wilson was, "I required U.S. origin." Mr. Lockwood 16 said, "I wouldn't agree to U.S. origin." So if you accept 17 the testimony from the witnesses, the two people who 18 authorized -- one made the firm bid and one made the firm 19 offer -- those offers don't match. There's no mutual 20 assent, and the testimony from Mr. Simpson makes it clear 21 that the brokers shouldn't match the firm bid that doesn't 22 match a firm offer. 23 So what you're left with, Tricon's case, is 24 it hinges entirely on Mr. Leyman's testimony about what he 25 claims to have negotiated on July the 22nd. He does so</p>	<p style="text-align: right;">49</p> <p>1 testimony was, "I required U.S. origin." The Instant 2 Messages are -- I point to those because it's evidence 3 that there clearly was discussion about the origin of the 4 product. 5 Dr. Wilson made it very clear that he 6 required U.S. origin MX, and here's the testimony from 7 Dr. Wilson. It was at Page 445 of the record: "I 8 believe" -- he answered: "I believe the communications 9 were silent on origin and I expected that once the exact 10 port has been identified that they would appear on the 11 contract. So in retrospect, you know, it's easy to see 12 had I gone back in time I didn't catch it, and it was my 13 mistake. It was actually Tricon's mistake, but I didn't 14 catch it. But that doesn't change the fact that I never 15 asked for non-U.S. material. I never gave Ed Leyman the 16 authority to purchase non-U.S. material." 17 That brings us to this, the basic point, 18 which is if -- if the authority that the broker is 19 provided is to purchase not -- or purchase U.S. origin MX 20 and he strikes a deal that does not, in fact, include an 21 origin guarantee, as the witnesses have testified, there's 22 no deal. We never agreed to it. There's no mutual assent 23 and the broker's exceeded his authority if he puts two 24 parties together that have different terms. 25 We have a -- we have a real conflict here</p>

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<p style="text-align: right;">50</p> <p>1 in terms of what the testimony is from Mr. Leyman and 2 Mr. Lockwood about when U.S. origin came up, and if -- and 3 counsel touched on this a little bit today, but this is 4 Mr. Leyman's testimony. He was first asked about whether 5 U.S. origin came up and he said, "No, it was never 6 discussed in the negotiations." That was his first answer 7 in his testimony, it wasn't discussed in the negotiations. 8 Then he was asked later in his deposition about a 9 statement in one of the Instant Messages and he said: 10 "Oh. Okay. Well, it did come up, but it came up only 11 after we had concluded the transaction, and, in fact, it 12 was a discussion around the discharge port declarations." 13 So Mr. Leyman's version, it came up after 14 the deal had been concluded, but Mr. Lockwood actually 15 said it came up before the deal had been concluded. We 16 looked at this testimony earlier today, but we skipped 17 over the very first thing he said: "Let me correct. It 18 was before Ed had said everything else is all done. He 19 asked me what the origin is," and he goes on to talk about 20 the fact that there was a discussion about origin prior to 21 Mr. Leyman saying everything is all done. Go to the next 22 page of that because it spills over. So this is the same, 23 continuing on with the answer, and he says: "And so there 24 was a discussion about it and then, apparently, after he 25 talked to Dr. Wilson, he called me back and said</p>	<p style="text-align: right;">52</p> <p>1 JUDGE WOOD: Could I ask a question? 2 MR. LEE: Yes. 3 JUDGE WOOD: And maybe this is just assumed 4 by everybody else, but what is the feasibility of 5 declaring your destination on, what, August the 8th and 6 having a shipment that is U.S. Gulf origin delivered in 7 Asia in the first half of September? 8 MR. LEE: First of all, the testimony is 9 it's about 35 days to get from the United States to Asia. 10 So there's -- 11 JUDGE WOOD: So you have a two-day leeway? 12 You have a two-day window? 13 MR. LEE: Well, there's time to make it 14 from there. Well, there's two reasons. First of all, it 15 was not U.S. Gulf. It's U.S. origin, and that was one of 16 the issues that Tricon made clear to the broker. They 17 didn't want to declare the specific port. There's a lot 18 of different places you can ship the product from to 19 shorten the time. 20 JUDGE WOOD: Other than Corpus, Texas City? 21 MR. LEE: Yes. You can ship it from the 22 West Coast. You can ship it from the East Coast, as long 23 as it is U.S. origin product, number one. Two, the -- 24 JUDGE WOOD: U.S. origin ship or U.S. 25 origin product?</p>
<p style="text-align: right;">51</p> <p>1 everything is all done." 2 So there -- there was a discussion about 3 U.S. origin. Mr. Leyman's memory is faulty. He said, 4 first of all, it never came up and then he said, "Well, it 5 came up after the deal was concluded." Mr. Lockwood said, 6 "No. It came up before everything was done," which would 7 be absolutely consistent with Dr. Wilson's testimony that 8 I told them it had to be U.S. origin material. 9 We know that Mr. Leyman made other 10 mistakes, Vinmar Exhibit No. 1. The only handwritten 11 document we have from Mr. Leyman is a draft confirmation. 12 He got the price wrong and he carried that price. In two 13 separate confirmations he got them wrong. And so 14 Mr. Leyman, without the benefit of any notes and without 15 the benefit of any tape recordings, testifies clearly 16 that, first of all, MX wasn't in the negotiation, U.S. 17 origin MX was not negotiations. Then he says, "Well, 18 maybe it came up after the fact." 19 That conflicts with what Mr. Lockwood had 20 said, and we know that he made other mistakes, and what 21 the record shows here is that the testimony from the two 22 traders is they never had an agreement on origin and you 23 cannot have a contract if you don't have mutual assent. 24 if there's no agreement on the essential terms, there's no 25 contract.</p>	<p style="text-align: right;">53</p> <p>1 MR. LEE: U.S. origin mixed xylenes. It 2 has to be U.S. origin. 3 JUDGE BENTON: For that matter, you could 4 have shipped from Asia? 5 MR. LEE: If it was U.S. origin. 6 JUDGE BENTON: Right. 7 MR. LEE: And what brought up the concern 8 is Mr. Rajevac's e-mail where he said Asian origin cargo. 9 That's the first time that Vinmar realized that Tricon had 10 a different understanding of this deal, but, your Honor, 11 just to come back, there was time just under the discharge 12 date -- and there was negotiation on that. By the way, 13 the record shows we were asking for a little bit later 14 time to declare the discharge date. Tricon wanted it 15 earlier. They wanted it even sooner, number one. Two, 16 there is time in the record, as the witnesses have 17 testified, to ship it from the United States to Asia even 18 if it -- 19 JUDGE WOOD: So if it was a West Coast 20 shipment, then it could have gotten to Asia first half 21 September? 22 MR. LEE: It could have gotten there. 23 Also, as the testimony is, that they could have shipped it 24 before, even before the discharge date was declared -- 25 JUDGE WOOD: The --</p>

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<p style="text-align: right;">54</p> <p>1 MR. LEE: -- and told the charter, the 2 ship, "It's going to go to one of two places, you'll find 3 out on the 8th, but head to Asia," which sometimes 4 happens. 5 JUDGE WOOD: So do you think that was part 6 of the deal? 7 MR. LEE: No. I think that the deal was 8 they had to get U.S. origin delivered by -- on or before 9 September 15th in to Asia. However they did that was up 10 to them, as long as it was U.S. origin MX and they 11 complied with the other terms of the contract which 12 included our right to inspect the quality. 13 JUDGE WOOD: So if your client never gave 14 them a destination on August the 8th, how do you know they 15 could not have complied with the deal as you outlined to 16 have delivered U.S. origin MX to Asia first half September 17 if they never had a destination declared? 18 MR. LEE: Well, we knew before August the 19 8th, your Honor, that we didn't have an agreement. They 20 told us that they would not -- we wrote back. When they 21 said Asian origin, we wrote back and said, "No. It's got 22 to be U.S. origin MX," and they said, "We're not going to 23 supply U.S. origin MX. We're not going to guarantee it." 24 So there was -- before August the 8th it was clear that 25 there was no agreement between the parties. There was no</p>	<p style="text-align: right;">56</p> <p>1 JUDGE BENTON: There was a request to wipe 2 the slate clean. 3 MR. LEE: There was a discussion about -- 4 prior to this issue coming up, there was a discussion 5 between the traders Tricon was looking for MX and we 6 offered to provide MX to them. We thought there was a 7 deal, we'd give it back to you, and then the U.S. origin 8 issue raised its head. 9 We realized that there was no agreement, 10 but we came back that -- I think what Judge Davidson is 11 asking about is on August the 6th we wrote an offer and 12 said, "We will continue with the same price, but it has to 13 be U.S. origin." In other words, we reconfirmed the 14 original offer we made to the broker. There was not a 15 price reduction in that offer -- 16 JUDGE DAVIDSON: Okay. 17 MR. LEE: -- and Tricon's response was to 18 provide different delivery dates and different quality mix 19 xylenes. 20 But this is -- the one other point I want 21 to make about the U.S. origin issue and what -- what 22 Mr. -- Dr. Wilson's perspective was, as shown by his 23 conversation with Mr. Leyman -- this is an excerpt from 24 the Instant Messages between Mr. Leyman and Dr. Wilson on 25 July the 22nd. Now, 12:57 p.m. is about 50 minutes after</p>
<p style="text-align: right;">55</p> <p>1 contract. We never had mutual assent. 2 JUDGE WOOD: Are we talking assent or 3 breach or are you considering that they breached the deal? 4 Because you thought the deal was U.S. origin, and so your 5 contention is that they breached the deal because then 6 they said, "No, we will not deliver U.S. origin." 7 MR. LEE: Well, I think that the record we 8 have in front of us is there is no mutual assent. We 9 never had an agreement. 10 JUDGE DAVIDSON: Wasn't there the 11 communication that, "We will go ahead with the deal if you 12 reduce the price?" 13 MR. LEE: No. We offered to -- to continue 14 the deal on the terms that we had originally offered which 15 was at the price, the thirteen ten, but it required U.S. 16 origin MX and they never -- they responded with something 17 else. 18 JUDGE WOOD: I think we all want to make 19 something very clear on the record. There was never a 20 destination declared. Correct? 21 MR. LEE: Correct. That is correct. 22 JUDGE DAVIDSON: There wasn't a request for 23 a price reduction? 24 MR. LEE: No, no. The --</p>	<p style="text-align: right;">57</p> <p>1 they claim a deal had been concluded and Dr. Wilson asked 2 Mr. Leyman specifically: "Given that Brad, Tricon is 3 selling out of the USG, am I getting 45 days from the bill 4 of lading or 30?" And Ed said: "No, spoke to him, 30 5 days." Never said, "Oh, I'm sorry. There's no 6 requirement that they provide anything from U.S. Gulf or 7 U.S. origin," nothing. It was simply, "No. You're going 8 to get 30 days from the bill of lading date." 9 JUDGE BENTON: I'm sorry. I'm missing it, 10 but that selling out of U.S. Gulf is not the same as 11 saying U.S. origin? 12 MR. LEE: I'm not -- I'm not saying that 13 this document is the firm bid, your Honor. 14 What I'm saying is it shows what 15 Dr. Wilson's understanding is, is that this product was 16 U.S. origin coming from the United States. And, more 17 importantly, as I asked Mr. Simpson at trial, this is a 18 statement about where he expects the MX to be shipped from 19 and there -- and Tricon's position is, "We weren't 20 required to ship it from anywhere, any specific location. 21 We can ship it from any place we wanted to," and 22 Mr. Leyman didn't bother to correct Dr. Wilson's, what he 23 now says is a misunderstanding about the terms of the 24 deal. 25 The point of all of this is there is a</p>

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<p style="text-align: right;">58</p> <p>1 great deal of confusion from the documentation on the --</p> <p>2 when you look at what was discussed on July the 22nd and</p> <p>3 when you look at the Instant Messages even after that</p> <p>4 where Mr. Leyman made several references to Vinmar didn't</p> <p>5 have any additional interest in the U.S. Gulf Coast.</p> <p>6 Dr. Wilson's testimony was very clear: "I authorized U.S.</p> <p>7 origin MX," and Mr. Leyman testifies: "Well, that was</p> <p>8 never part of the deal," but there's plenty of</p> <p>9 documentation surrounding it that clearly shows it was</p> <p>10 discussed; it was raised; and Mr. Leyman's credibility and</p> <p>11 his -- and, frankly, his memory is faulty.</p> <p>12 JUDGE BENTON: But you also have Dr. Wilson</p> <p>13 who said that he was -- I can't quote him exactly but that</p> <p>14 he himself was distracted during this time for some</p> <p>15 personal reasons.</p> <p>16 MR. LEE: Right. I think the testimony was</p> <p>17 that he was out of the office and distracted in the days</p> <p>18 that -- when the documents were coming in, which is one of</p> <p>19 the reasons why he didn't look at them closely. I mean,</p> <p>20 yes.</p> <p>21 JUDGE BENTON: Okay. But -- okay. But</p> <p>22 just as the documentary evidence memorializes that</p> <p>23 Mr. Leyman was not tidy in memorializing the deal,</p> <p>24 isn't -- it can't -- isn't it reasonable to -- to find</p> <p>25 that Dr. Wilson by his own distractions maybe didn't</p>	<p style="text-align: right;">60</p> <p>1 MR. LEE: -- between Mr. Leyman and</p> <p>2 Mr. Lockwood that did not include Dr. Wilson.</p> <p>3 JUDGE BENTON: Okay.</p> <p>4 MR. LEE: So we have one half of the</p> <p>5 conversation but not the other half.</p> <p>6 Your Honor, if you look at the evidence on</p> <p>7 July the 31st, the -- Mr. -- Dr. Wilson clearly says this</p> <p>8 was supposed to be U.S. origin and he's been consistent in</p> <p>9 his testimony throughout this case that he authorized only</p> <p>10 U.S. origin MX.</p> <p>11 JUDGE BENTON: Okay.</p> <p>12 MR. LEE: And, you know, Mr. Leyman, who</p> <p>13 not only has he -- didn't have any notes, but he -- we</p> <p>14 know he has a substantial business relationship with</p> <p>15 Tricon. There's plenty of evidence that as soon as this</p> <p>16 issue came out there are a number of Instant Messages from</p> <p>17 Mr. Lockwood to Mr. Leyman making it clear that he's</p> <p>18 expected to assist him and he's expected to testify on his</p> <p>19 behalf and confirm this agreement on the terms that Tricon</p> <p>20 was asking for.</p> <p>21 JUDGE BENTON: Yeah, yeah. Yeah, I do want</p> <p>22 to -- when we hear the final comments from</p> <p>23 Mr. Diaz-Arrastia, I do want to talk about the suggestions</p> <p>24 that Mr. Lockwood has attempted to influence the testimony</p> <p>25 of Mr. Leyman, but we've interrupted your train of thought</p>
<p style="text-align: right;">59</p> <p>1 really tell Leyman that it had to be U.S. origin? And</p> <p>2 this doesn't really say, given -- I mean, this is -- this</p> <p>3 could just as easily be inferred as a statement about</p> <p>4 where he's shipping out of, not that it's U.S. origin. I</p> <p>5 mean --</p> <p>6 MR. LEE: Well -- but this statement is</p> <p>7 inconsistent with the position that Mr. Leyman took in his</p> <p>8 deposition and Tricon's taking in this case, which is we</p> <p>9 weren't required to ship it from anywhere, and the point</p> <p>10 is Mr. Leyman -- or Dr. Wilson makes the statement within</p> <p>11 the hour after this transaction is allegedly concluded and</p> <p>12 Mr. Leyman does nothing to correct it. He doesn't say,</p> <p>13 "Rick, you've got it wrong. Be aware they're not required</p> <p>14 to ship it from the U.S. Gulf Coast or anywhere else, for</p> <p>15 that matter."</p> <p>16 JUDGE BENTON: Mr. Lockwood had previously</p> <p>17 in a text message said, "Most likely USG."</p> <p>18 MR. LEE: No. There's no evidence prior to</p> <p>19 on July the 22nd that there was any statement made to</p> <p>20 either Mr. Leyman or Dr. Wilson that it was most likely</p> <p>21 USG.</p> <p>22 JUDGE BENTON: Okay.</p> <p>23 MR. LEE: That's not in the record. What</p> <p>24 the testimony is, that that was an oral conversation --</p> <p>25 JUDGE BENTON: Ah.</p>	<p style="text-align: right;">61</p> <p>1 a lot.</p> <p>2 MR. LEE: That's fine. I'm happy -- I want</p> <p>3 to make sure that we, you know, answer any questions that</p> <p>4 you have, but when you look at the credibility and when</p> <p>5 you look at the testimony of these various witnesses and</p> <p>6 is it Mr. -- is it Dr. Wilson or is it Mr. Leyman, because</p> <p>7 you have to make that decision. Their testimony</p> <p>8 conflicts. So is it Dr. Wilson's testimony or</p> <p>9 Mr. Leyman's testimony, and there are a number of Instant</p> <p>10 Messages back and forth where, again, Mr. Lockwood is</p> <p>11 making it clear that he expects his assistance and</p> <p>12 cooperation.</p> <p>13 And the other thing that has come out of</p> <p>14 this is there's two people who have a financial interest</p> <p>15 in the outcome and one that doesn't, and Mr. --</p> <p>16 Dr. Wilson's no longer at Vinmar. He's been gone for a</p> <p>17 long time. He has no stake in this. We had to subpoena</p> <p>18 him to get him to testify. He testified the way he</p> <p>19 testified, but we know that Mr. Lockwood still has a bonus</p> <p>20 hinging on the outcome of this case, is what he told us in</p> <p>21 his testimony, and he also said that Mr. Leyman has a</p> <p>22 commission that's hinging on the outcome of this case. He</p> <p>23 made it very clear that, although Mr. Leyman had sent a</p> <p>24 commission invoice to Tricon, he was not going to pay it</p> <p>25 unless Vinmar was ordered to perform.</p>

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<p style="text-align: right;">62</p> <p>1 And so until this Panel or somebody else 2 finds out and says there's an agreement, Mr. Leyman 3 doesn't get paid. So Mr. Leyman has a financial interest 4 in the outcome. Mr. Lockwood has a financial interest in 5 the outcome and I think you should keep that in mind as 6 you, as you look at the testimony from the witnesses as to 7 what was done on July the 22nd, because the testimony from 8 the parties is clear that if you don't have that agreement 9 at the outset, then the broker has no authority to put the 10 parties together. 11 Let's talk about the -- another element of 12 contract formation which is a requirement that both 13 parties intend to be bound and in this case the evidence 14 is overwhelming, I think, that Tricon did not consider the 15 broker confirmation to be a binding contract. We wouldn't 16 be here in arbitration if they felt like the broker 17 confirmation was a binding contract. There's no 18 arbitration provision in there. Instead, they sent a 19 sales contract and the testimony on that sales contract is 20 that it's their standard practice. There are valuable 21 terms for Tricon. In fact, I think Mr. Rajevac testified 22 that it was a form of protection for Tricon. 23 All of these other terms, this document, 24 has value to Tricon. We know that that document, that 25 sales contract, has a specific provision that expressly</p>	<p style="text-align: right;">64</p> <p>1 Mr. Pascu's e-mail, the comments that he made, there were 2 a number of revisions and handwritings and scratchouts 3 made to that document and Mr. Rajevac, when he responded, 4 didn't accept all of those terms. 5 He said, "Well, we don't like your 6 demurrage time bar claim, so we're not going to agree to 7 that. So we never even had an agreement on all of the 8 terms of this sales contract," but Mr. Pascu's e-mail is a 9 comment. It's not acceptance. And there's a case that we 10 cited in our opening brief, and I think we even put it in 11 our post hearing brief and it came in that big stack of 12 original cases, but it's the Echo case, which was at 13 Tab 25 of our -- those cases that we provided sometime 14 ago. I mean, I'm happy to provide the case again, but 15 that case talks about acceptance language in it, a letter 16 that was written, and they talk about, "Look, there's no 17 vocabulary of acceptance here. It's not an acceptance." 18 But we also have the issue over this 19 signature and the -- we know that the sales contract had 20 specific signature blanks made for Mr. Lockwood and for 21 Dr. Wilson. It even had a place for him to say accepted 22 and we know that that was never done, and let's go to the 23 next page because we've talked -- counsel talked about 24 Mr. Simpson's testimony earlier today and he read from his 25 report, but this is what Mr. Simpson said on</p>
<p style="text-align: right;">63</p> <p>1 cancels and supersedes the broker confirmation. The only 2 purpose that the broker confirmation serves is to be a 3 commission statement. It doesn't exist anymore. This 4 sales contract has cancelled it, superseded it. And so 5 you're -- you're at a point, then, where you have to have 6 some acceptance of this sales contract and there's two 7 points on that. First of all, we've talked about 8 Mr. Pascu's e-mail, but I want to come back to it real 9 quick. 10 Again, this is Vinmar, Mr. Pascu responding 11 to Vuk Rajevac saying, "Here are my comments and I'll be 12 sending you a purchase order for your review." Nothing 13 about, "I accept. We accept. We'll sign it. We sign it. 14 Dr. Wilson has looked at it and he agrees with it and he 15 accepts it." Nothing. Instead it's, "I have some 16 comments and I'll be sending you a purchase order." 17 Mr. Lockwood -- I asked Mr. Lockwood if he 18 believed that this was an acceptance and his testimony at 19 Page 155 said: "But you don't know whether that's an 20 acceptance or not, do you?" 21 Answer: "I'm not aware, no." 22 So Tricon's representative, when he 23 testified, wasn't able to say that Mr. Pascu's e-mail was 24 an acceptance. And, in fact, we know that they were still 25 haggling over terms even on that sales contract because</p>	<p style="text-align: right;">65</p> <p>1 cross-examination and this is exactly what we're talking 2 about here. I asked him at Page 503 of his testimony. I 3 said: "Most of these other documents, they contain 4 signature blanks. Don't they?" And he said: "I'll say 5 most of the aromatics don't." 6 Mixed xylene is an aromatic, and I said: 7 "They don't contain signature blanks?" 8 Answer: "Not that I -- most of them. The 9 definition of most of them is probably the tough part." 10 He says: "I would say the majority of them do not contain 11 signature blanks. I can just tell you Valero's never 12 did," and, as you may recall from Mr. Simpson's testimony, 13 that's where he spent his career, at Valero. 14 So what he said here is the custom in the 15 industry is you don't have a signature blank on a sales 16 contract or this passing paper after a broker confirm. 17 You don't have them, but this one did and the 18 communication is very clear, if you're going to break from 19 industry custom and include signature blanks. And it's 20 not just a preprinted signature blank. It's a signature 21 blank for -- specifically for Brad Lockwood and one for 22 Rick Wilson with a spot for Mr. Wilson to sign where he 23 accepted. He didn't accept it, never signed it. 24 Mr. Lockwood never even signed it. 25 JUDGE DAVIDSON: Is your argument that the</p>

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<p style="text-align: right;">66</p> <p>1 presence of the signature blanks and the drafts going back 2 and forth is evidence that signatures are required in 3 order for there to be a binding contract? 4 MR. LEE: Yes, yes, in addition to the -- 5 the whole issue of assent. 6 JUDGE DAVIDSON: If the price of the 7 xylenes had tripled between July the 4th and August the 8 8th, therefore, they would have had the right to back out 9 by just refusing to sign? 10 MR. LEE: I think that's exactly why they 11 didn't sign it. They -- two points, two reasons why 12 Tricon didn't sign that document before they sent it to 13 us. Number one is we know they're not going to do this 14 deal unless their terms and conditions are in place. 15 They've made it very clear that those are valuable terms 16 for their protection. 17 JUDGE DAVIDSON: So if the price of xylene 18 had gone up, it's your position that your client -- that 19 they were under no obligation to sell to your client at 20 the contract -- at the e-mailed price that Leyman 21 confirmed to both sides? 22 MR. LEE: Well, I don't think there was 23 ever a deal, your Honor, so -- because we never came to a 24 mutual assent. So correct. 25 JUDGE DAVIDSON: Okay.</p>	<p style="text-align: right;">68</p> <p>1 statement and he didn't know that they hadn't paid it, but 2 his testimony is as soon as the broker puts two people 3 together, he's earned his commission, and he -- the 4 testimony from Mr. Lockwood had been that they didn't 5 refuse to pay it. They just weren't going to pay it until 6 somebody ordered Vinmar to perform, and so I asked him 7 about whether he had knew of anything in this case that 8 there was an agreement between MOAB and Tricon. But 9 what's interesting is Mr. Simpson says very clearly the 10 broker earns his commission when he puts them together. 11 They never paid the commission and, in fact, MOAB never 12 even sent a commission statement to Vinmar. 13 JUDGE WOOD: I'm sorry. So what is your 14 interpretation of the language "puts together"? 15 MR. LEE: When he -- when the broker claims 16 that he has matched a firm bid with a firm offer. 17 JUDGE WOOD: He's entitled to a commission? 18 MR. LEE: He's done his job. 19 JUDGE WOOD: And isn't that a contract? 20 MR. LEE: If he matches a firm bid. 21 JUDGE WOOD: To a firm offer. 22 MR. LEE: The same exact terms. 23 JUDGE WOOD: Firm bid, firm offer, he puts 24 them together, deal's done, broker gets commission. 25 MR. LEE: If it meet -- if the terms match</p>
<p style="text-align: right;">67</p> <p>1 MR. LEE: And I also think under this -- 2 this record, yes, it required signatures before there was 3 a binding agreement. 4 JUDGE DAVIDSON: Okay. The presence of the 5 signature blanks and the drafts going back and forth, in 6 your opinion, is evidence that signatures were required as 7 a condition of the deal going forward? 8 MR. LEE: Yes, your Honor. 9 JUDGE DAVIDSON: Thank you. 10 MR. LEE: And, you know, another 11 interesting point on this whole question of whether there 12 was -- whether they intended to be bound and whether there 13 really was an agreement is the question of MOAB's 14 commission, and Mr. Simpson, their expert, testified at 15 page 506. I asked him: "It's your opinion that a broker 16 earns his commission when he concludes a deal?" 17 He said: "Yes, sir." 18 "When he puts a firm bid with a firm offer, 19 the broker earns his commission?" 20 "Yes, sir." 21 "And he should be paid for that 22 commission?" 23 "Yes, sir." 24 And I asked him whether he -- he said he 25 didn't know that Tricon had been sent a commission</p>	<p style="text-align: right;">69</p> <p>1 and he has not exceeded his authority, yes. 2 JUDGE WOOD: So if he puts the deal -- if 3 he puts the parties together, he puts the deal together, 4 he gets a commission? 5 MR. LEE: Yes. 6 JUDGE WOOD: So the term, the usage of 7 "puts together" means deal done? 8 MR. LEE: If he puts a firm bid with a firm 9 offer, yes. 10 JUDGE WOOD: How are you qualifying "puts 11 together"? 12 MR. LEE: I'm not qualifying it other than 13 to say that we've got to make sure that the firm bid and 14 the -- all of the terms of the firm bid match all of the 15 terms of the firm offer. 16 JUDGE WOOD: In your description of this, 17 do you -- is there a way in which a broker puts the 18 parties together and earns a commission in which there is 19 not an enforceable agreement? 20 MR. LEE: Yes. 21 JUDGE WOOD: So the broker can earn a 22 commission even though there is not a trade done? 23 MR. LEE: Possibly, and this is the 24 scenario I'm thinking of. It's this case where the party 25 that's trying to sue on the contract has made it clear</p>

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<p style="text-align: right;">70</p> <p>1 that they never intended to be bound by the confirm in the</p> <p>2 first place, but I think the broker --</p> <p>3 JUDGE WOOD: You can't have --</p> <p>4 MR. LEE: -- has earned his commission.</p> <p>5 JUDGE WOOD: -- a breach if there's not a</p> <p>6 contract. So that's why I'm back to my deal, is it's</p> <p>7 Vinmar's position that there was a breach. So, therefore,</p> <p>8 you get to walk the deal or there was never a deal.</p> <p>9 MR. LEE: Never a deal.</p> <p>10 JUDGE WOOD: Okay.</p> <p>11 MR. LEE: Never a deal. And the fact that</p> <p>12 Tricon didn't pay the commission and the fact that the</p> <p>13 broker never sent us a commission is evidence that there</p> <p>14 was never a deal because the broker, if under Tricon's</p> <p>15 case, if the broker -- Mr. Leyman earned his commission</p> <p>16 under their case. He did what he was supposed to do.</p> <p>17 That's what Mr. Simpson said. They didn't pay it. He</p> <p>18 never -- and Mr. Leyman didn't even send us a commission</p> <p>19 statement.</p> <p>20 So whether you look at it from mutual</p> <p>21 assent, whether you look at it from the contract</p> <p>22 documentation, you end up with no contract. There is no</p> <p>23 contract because there's lack of mutual assent, and there</p> <p>24 is no contract because Tricon did not intend to be bound</p> <p>25 by the confirm and we never came to shore on a sales</p>	<p style="text-align: right;">72</p> <p>1 this conversation, what happens before this is</p> <p>2 Mr. Lockwood went to Mr. Leyman and said, "I'm looking to</p> <p>3 buy MX in Asia." Okay?</p> <p>4 JUDGE BENTON: Right</p> <p>5 MR. LEE: Or, "I'm looking to buy MX,</p> <p>6 period," and there's a discussion about Tricon's interest</p> <p>7 in buying MX on that day, that Mr. Leyman then reaches out</p> <p>8 to Rick Wilson to indicate that there's an interest on</p> <p>9 Tricon's behalf in buying mix xylenes. This</p> <p>10 conversation -- it's our position that this conversation</p> <p>11 in Joint Exhibit 12 occurred prior to the time that</p> <p>12 Mr. Leyman -- I mean, Dr. Wilson had been advised by</p> <p>13 Tricon that the product was not necessarily U.S. origin</p> <p>14 cargo, so that at this time --</p> <p>15 JUDGE BENTON: This is a month later?</p> <p>16 MR. LEE: No, no, no. This is the -- this</p> <p>17 is a morning --</p> <p>18 JUDGE BENTON: Oh, yeah yeah, yeah.</p> <p>19 MR. LEE: This is July the 31st --</p> <p>20 JUDGE BENTON: July 31st.</p> <p>21 MR. LEE: -- in the morning.</p> <p>22 JUDGE BENTON: Excuse me. A week later.</p> <p>23 MR. LEE: It's several hours later where</p> <p>24 Dr. Wilson sends his e-mail. He first calls Mr. Leyman</p> <p>25 and says, "We have a problem," and then sends an e-mail to</p>
<p style="text-align: right;">71</p> <p>1 contract, never signed, never accepted.</p> <p>2 JUDGE BENTON: Five minutes ago we had a</p> <p>3 banter about this issue of wiping the slate clean. Would</p> <p>4 you have Mr. Runions put up Exhibit J-12?</p> <p>5 Now, if you read -- if you read these text</p> <p>6 messages -- I think that's what they are. Correct?</p> <p>7 MR. LEE: Instant Messages, yes, your</p> <p>8 Honor.</p> <p>9 JUDGE BENTON: Instant Messages, yeah.</p> <p>10 Just a second.</p> <p>11 I mean, if you read these messages, I don't</p> <p>12 remember what Mr. Wilson -- Dr. Wilson's testimony was</p> <p>13 about this and you're invited to refresh my memory --</p> <p>14 maybe Judge Davidson and Judge Wood would remember, but</p> <p>15 can't this be -- can't this reasonably be read to -- to</p> <p>16 mean that Wilson recognized he's in a pickle and is asking</p> <p>17 Mr. Lockwood, "Hey, let's just -- let's just wipe the</p> <p>18 slate clean. Let's undo the deal. Let's undo the deal we</p> <p>19 have. This is not -- we don't have a deal. Let's undo</p> <p>20 the deal."</p> <p>21 MR. LEE: Your Honor, actually, I would</p> <p>22 disagree with that, and here's why.</p> <p>23 This conversation -- you have to go back</p> <p>24 and also look at Vinmar Exhibit No. 9, which is the</p> <p>25 Instant Messages between Mr. Lockwood and Mr. Leyman, and</p>	<p style="text-align: right;">73</p> <p>1 Tricon saying, "Wait a minute. You had to guarantee U.S.</p> <p>2 origin."</p> <p>3 JUDGE BENTON: Okay. All right. I'll make</p> <p>4 a note. This is on the 31st, 9:40 -- 9:40. Okay.</p> <p>5 MR. LEE: Yes. And you have to be careful</p> <p>6 when you look at the various Instant Messages, because, if</p> <p>7 it's an Instant Message produced by Mr. Lockwood, it's</p> <p>8 going to be Central Time and if it's an Instant Message</p> <p>9 produced by Mr. Leyman it will be Eastern Time. So</p> <p>10 there'll be -- the times don't always match up</p> <p>11 specifically.</p> <p>12 JUDGE BENTON: And who --</p> <p>13 MR. LEE: This was from Mr. Lockwood. So</p> <p>14 this will be --</p> <p>15 JUDGE BENTON: Central Time?</p> <p>16 MR. LEE: -- Central Time.</p> <p>17 JUDGE BENTON: Okay.</p> <p>18 MR. LEE: But -- and I would also say that</p> <p>19 if Dr. Wilson felt like he had a problem on the morning of</p> <p>20 July the 31st when the price of MX had fallen so far below</p> <p>21 the price of the deal, there's no reason why he would have</p> <p>22 offered to wipe the slate clean, knowing that he was in</p> <p>23 trouble. There would have been a different response had</p> <p>24 he known that there was an issue with the contract.</p> <p>25 So I -- I don't think that it's reasonable</p>

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<p style="text-align: right;">74</p> <p>1 to infer that he knew that there was a problem and that 2 he's trying to get out of it. I think the reality is he 3 had -- he thought that he still had MX from Tricon. He 4 thought there was a deal on his terms and he was offering 5 to give it back to him at the price that he had agreed to 6 buy it, and it wasn't later that he learned that there was 7 an issue on the origin of the mix xylenes. 8 JUDGE BENTON: Mr. Lee, we -- we have asked 9 a lot of questions and you may have had some other things 10 you wanted to amplify to that and -- 11 JUDGE WOOD: May I ask one more question? 12 JUDGE BENTON: -- for that reason and 13 because I need to take a restroom break, after Judge 14 Wood's question and your answer, we're taking a restroom 15 break. 16 JUDGE WOOD: Claimant has relied on 17 Exhibit 8 which is some e-mails back and forth between 18 Mr. Anaya and Mr. Wilson, I believe, and I would 19 appreciate your analysis -- 20 MR. LEE: Sure. 21 JUDGE WOOD: -- or your view. 22 MR. LEE: And thank you for reminding me 23 because I had a note about that. Exhibit 8, the e-mails 24 first from Mr. Anaya on July the 24th, and I think that 25 you have to pay very careful attention to the question</p>	<p style="text-align: right;">76</p> <p>1 MR. LEE: And I just have one more area to 2 cover and I'll try to do it very quickly. 3 (Recess from 11:26:24 a.m. to 11:32:43 4 a.m.) 5 JUDGE BENTON: Mr. Lee, are you ready, sir? 6 MR. LEE: Yes. 7 JUDGE BENTON: I hope that gave you an 8 opportunity to regather where you wanted to go because I 9 asked so many questions and so thanks for accommodating 10 me. You may proceed. 11 MR. LEE: That's what we're here for, to 12 try to answer whatever questions you have, and I just want 13 to make one point to be clear on something. 14 There's no question that Dr. Wilson from 15 his perspective had been told by Mr. Leyman the deal had 16 been done and there are communications between July the 17 22nd and July the 31st internally where Dr. Wilson 18 believes that he has concluded a deal, and so the 19 difference here is that Dr. Wilson had been told that a 20 deal had been concluded on his terms. 21 JUDGE BENTON: On his terms. And so those 22 internal celebrations are of no moment, as I think your 23 position, as to what they say the terms are? 24 MR. LEE: Correct. 25 JUDGE BENTON: Because they are celebrating</p>
<p style="text-align: right;">75</p> <p>1 that he asked. He asked the port of origin. He doesn't 2 just ask the origin. He says, "Where is this coming from? 3 What port are we loading this," and the reason for that is 4 because there is an inspection obligation. We need to 5 know where the product will load. 6 Dr. Wilson testified about this document 7 and gave you his testimony and his understanding of what 8 he was being asked, which was what's the loading port. 9 That's what he was responding to when he said, "We don't 10 know until they'll declare the discharge port." He's -- 11 he wrote the e-mail. He received it. He wrote it and his 12 response was, "I was answering the question port of 13 origin, the loading port, where is this going to be loaded 14 onto the ship," and, again, the SAP reason for that is, 15 "So we know where to inspect the product," and in fact, if 16 you look at Mr. Pascu's e-mail, which is Joint Exhibit 13, 17 that's one of the questions that he asked: "Where are 18 we -- where is this going to be loaded? I need all the 19 loading stuff so I can get the inspector there. So get 20 back to me on that," so which is consistent with 21 Dr. Wilson's testimony that it was U.S. origin, that 22 Tricon was not ready to commit to the precise loading 23 port. 24 JUDGE BENTON: Let's take another short 25 break. I apologize.</p>	<p style="text-align: right;">77</p> <p>1 what they think are their terms? 2 MR. LEE: Correct. 3 JUDGE BENTON: All right. 4 MR. LEE: And at the point in time in which 5 he learns that that's not the case -- 6 JUDGE BENTON: Right. 7 MR. LEE: -- that the broker had exceeded 8 his authority by not -- 9 JUDGE BENTON: They blow out the candles. 10 MR. LEE: We raised an issue. We didn't 11 get it resolved. 12 JUDGE BENTON: Right. He put the party 13 mode -- the party stuff up. 14 MR. LEE: Yes. 15 The last thing I want to touch on, unless 16 we have questions on other issues, is the damages and, you 17 know, if the Panel first finds that it has jurisdiction, 18 and that's a -- you've got to get to the point where 19 somehow this sales contract becomes part of this deal for 20 the Panel to have any jurisdiction whatsoever, and if you 21 conclude that there is a -- an enforceable contract, which 22 we disagree with, I think that you have to look carefully 23 at the damages. 24 And the fact is that Tricon has made it 25 clear that their damage model is based under the resale</p>

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<p>1 method under 2706 of the UCC, and if you look at that 2 provision, that provision says you resell the goods 3 concerned. So, "I'm -- I'm selling the goods that I had 4 earmarked for you. I'm going to sell them to somebody 5 else," and the UCC is also clear that, in order to be 6 entitled to damages, it's very much like a contract case. 7 You have to have damages. You have to be an aggrieved 8 seller. That's what 2703 says, which is the intro to the 9 seller's remedies. You have to be an aggrieved seller, 10 and it's our position that Tricon made more money on its 11 resale using the goods that they claim to have earmarked 12 for Vinmar. They resold them to somebody else for more 13 money than they could have possibly made under any 14 scenario under the Vinmar contract, and we put this -- 15 this was what I went through with Mr. Lockwood, and 16 this -- this is the resale. This is the sale to KP Chem 17 and the evidence is they delivered the 5,000 metric tons 18 to KP Chem in October, and that's what they were paid, 19 \$5 million. That's the alleged resale. But the evidence 20 also is -- the only evidence in the record, by the way, is 21 that they purchased this mix xylenes that was to be 22 supplied, the resale, seven days after the last possible 23 date to comply with this alleged Vinmar agreement. 24 The Vinmar agreement that they claim said 25 delivery was to be made on or before September the 15th.</p>	<p>1 matter how unrealistic under this Vinmar deal, and the UCC 2 is clear, you know, you can't put somebody in a better 3 position than they would be in if performance had 4 occurred. 5 And so we also looked at -- let's see what 6 they would have made under their expert, which is 7 Exhibit 39, his market price calculation. So if you're 8 looking at what their reasonable expectation to -- 9 remember, because they had to buy the MX, that was 10 \$976,000. That's what their damage claim is under market 11 differential. So if you use that scenario, they made 12 \$900,000 on the resale. What is -- and what's interesting 13 about this is -- so we've -- I've looked for cases. There 14 is a statement in 2706 that says that the seller is not 15 accountable for profits earned on a resale. What does 16 that mean? 17 Well, I'll tell you what we have been able 18 to uncover. The old common law was that if you -- if a 19 buyer breached a contract, the seller acted as sort of the 20 agent for the buyer in trying to resell. You're having to 21 mitigate -- it's part of the mitigation of damages. So 22 you're acting as the buyer's agent. You're out there 23 selling and you have to do the best job you can and you 24 have the right to sue the buyer for whatever is not 25 recovered, and what the UCC is saying here is, "Well,</p>
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<p>1 Well, the goods, if you follow the MX -- because Tricon 2 doesn't make mix xylenes. They've got to purchase it to 3 get it. So in order to supply this alleged Vinmar deal, 4 they had to go out and buy mix xylenes from somebody else 5 to supply it. There's no evidence in the record that that 6 was ever done. 7 Instead, the evidence is that seven days 8 after the last possible delivery date under this agreement 9 with Vinmar is when they entered into an agreement with 10 J&J to purchase mix xylenes, the goods concerned, under 11 the resale. And they made \$1.878 million. That's the 12 profit on that transaction with KP Chem, the resale, and 13 we looked at -- I went through a scenario with 14 Mr. Lockwood and I gave him the benefit of every argument 15 that they had made, which was let's increase the volume -- 16 if you go to the next slide -- we'll increase the volume 17 under this alleged Vinmar contract to about 5 percent to 18 fifty-two fifty metric tons. I'll give you the absolute 19 lowest price that you can find in your market data between 20 July 22nd and September 15th, and we did a calculation and 21 under that -- under the best possible scenario, they would 22 have made a million eight five, so \$1,850,000 under a deal 23 with Vinmar. They still profited on the KP Chem resale by 24 \$30,000 -- 28,000. They made more money on the resale 25 than they would have ever made under any scenario, no</p>	<p>1 let's make it clear that if you profit from that resale 2 transaction, the buyer doesn't have a claim against you 3 for the profit." They can't come back and say, "Hey, you 4 did better, so I want you to give me the profit under this 5 sort of agency theory that existed in common law." White 6 & Summers tells you, though, that in a resale 7 transaction -- and White & Summers is -- I think everybody 8 recognizes is a leading UCC treatise out there. 9 What do they say about 2706? They say that 10 it will never be litigated. This profit statement will 11 never be litigated in a 2706 case because the resale above 12 the contract price means that the aggrieved seller's no 13 longer aggrieved and has no claim against the buyer, no 14 damages. I've made more on my resale than I could have 15 ever made under the Vinmar deal. So why -- have I been 16 damaged? I haven't been damaged. That's what White & 17 Summers says. That's what the evidence shows on the 18 resale. They've claimed that they resold this mix xylenes 19 and the evidence is they made more money than they would 20 have ever made under any deal with Vinmar. 21 So what we've seen now, the way they try to 22 get around that is, "Oh, wait a minute. We're now going 23 to claim we're a lost volume seller." It's not in their 24 pleadings, it's not in their expert report, and I don't 25 think I heard a single bit of testimony about lost volume</p>

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<p style="text-align: right;">82</p> <p>1 seller. It's not -- it's not in the record. But that's</p> <p>2 what they've come up with now to try to get around this</p> <p>3 issue of, "Okay. We've made more money than we could have</p> <p>4 ever possibly made." But the lost volume seller takes</p> <p>5 more than just saying, "Oh, I could have done another</p> <p>6 transaction." You have to prove that you've had the</p> <p>7 capacity. Where is the evidence that they had the ability</p> <p>8 to do the transaction? Where is the evidence that they</p> <p>9 had the financial resources? They've talked a lot about</p> <p>10 this market being frozen. Where is the evidence that they</p> <p>11 could, in fact, have located mix xylenes to supply both of</p> <p>12 these contracts or other contracts? There's no evidence.</p> <p>13 JUDGE BENTON: Well, they've said there was</p> <p>14 no buyers. There's --</p> <p>15 JUDGE WOOD: No sellers.</p> <p>16 JUDGE BENTON: There isn't -- there's not</p> <p>17 evidence of a lack of sellers.</p> <p>18 MR. LEE: Your Honor, there's no evidence</p> <p>19 at all of -- of sellers.</p> <p>20 JUDGE BENTON: All right.</p> <p>21 MR. LEE: There's no evidence of their</p> <p>22 ability to get it. There's no evidence of their ability</p> <p>23 to handle another transaction and, in fact, your Honor,</p> <p>24 there's evidence in the record that I went through with</p> <p>25 Mr. Lockwood, a series of e-mails between Tricon and KP</p>	<p style="text-align: right;">84</p> <p>1 also say that the lost volume seller theory is</p> <p>2 inconsistent with a claim of resale.</p> <p>3 A lost volume seller is someone, "I can't</p> <p>4 make up this sale because I have lost it, and so I'm</p> <p>5 entitled to damages," and the case is under lost volume</p> <p>6 seller cases that deal with 2708 which is the market</p> <p>7 differential model, not the resale. The resale, you've</p> <p>8 got to start from what 2706 says, and it says I'm</p> <p>9 reselling the goods concerned, and the only evidence in</p> <p>10 the record is -- the only MX that they had was MX that</p> <p>11 they bought seven days after this transaction.</p> <p>12 JUDGE DAVIDSON: But this is a commodity</p> <p>13 and you presumably can almost always buy any commodity at</p> <p>14 the then market price and sell it at the then market</p> <p>15 price. True?</p> <p>16 JUDGE BENTON: I think what -- what Mr. Lee</p> <p>17 is saying is they needed to put on some evidence that the</p> <p>18 commodity was there and on Bavex before the deadline to</p> <p>19 provide your MX, there needed to be evidence that they had</p> <p>20 the line of credit, the cash available to go out in to the</p> <p>21 commodity market to buy it, is what you're saying.</p> <p>22 MR. LEE: That is what I'm saying and I'm</p> <p>23 also saying that as part -- the evidence that we do have</p> <p>24 is that they didn't buy any -- they didn't have any MX</p> <p>25 until seven days later. So if you're looking for evidence</p>
<p style="text-align: right;">83</p> <p>1 Chem where Tricon is trying to figure out, "How we're</p> <p>2 going to get all this volume of mixed xylenes that we owe</p> <p>3 to you? How are we going to get it to you?"</p> <p>4 So there's a record that they're obviously</p> <p>5 having some problems with mix xylenes. There's no record,</p> <p>6 no evidence, that they had the ability, the capacity, the</p> <p>7 financial resources, the storage, all of those things that</p> <p>8 were required to show that, "Hey, I could have done this</p> <p>9 transaction and all these other transactions."</p> <p>10 JUDGE BENTON: Well, capacity and storage</p> <p>11 are of no moment for the type of business you're in, but I</p> <p>12 think the Panel might agree that the record is devoid of</p> <p>13 the financial capacity to otherwise execute on the</p> <p>14 transaction.</p> <p>15 So I think I'll invite you to -- to go to</p> <p>16 another point because I think -- I think that there are</p> <p>17 some challenges for Tricon in that regard, but storage and</p> <p>18 capacity to produce are not it because they're not in the</p> <p>19 production business.</p> <p>20 MR. LEE: No. Right. And when I say</p> <p>21 "capacity", I didn't mean capacity to produce. I meant</p> <p>22 the ability, the capacity to do this transaction.</p> <p>23 JUDGE BENTON: The financial capacity?</p> <p>24 MR. LEE: From a financial perspective to</p> <p>25 be able to handle these transactions and others, but I</p>	<p style="text-align: right;">85</p> <p>1 in the record, the inference to be drawn from that,</p> <p>2 they've said it's a frozen market.</p> <p>3 Now, I understand that the question to me</p> <p>4 was, "Well, aren't there -- can't you buy it?" But what's</p> <p>5 the evidence in the record? It's a frozen market and we</p> <p>6 didn't get any MX at all until September the 22nd.</p> <p>7 JUDGE BENTON: Yeah. There is no evidence</p> <p>8 in the record that the Sharolyn Wood MX entity had xylene,</p> <p>9 that they were ready, willing and able to sell.</p> <p>10 MR. LEE: Correct.</p> <p>11 JUDGE WOOD: And I would like your</p> <p>12 explanation on the dispute over this bidding process</p> <p>13 coming about before the declaration of destination date so</p> <p>14 that there was never a declaration of destination.</p> <p>15 Why is it that you claim that then Tricon</p> <p>16 had to have the goods on hand in a contract in order to be</p> <p>17 able to prove damages, that there was never a declaration</p> <p>18 of destination?</p> <p>19 MR. LEE: Well, I don't think I'm saying --</p> <p>20 and maybe I'm not being entirely clear.</p> <p>21 I'm not saying that they had to have the</p> <p>22 goods onhand by August the 8th or whenever, but the</p> <p>23 record -- the testimony and what the evidence has shown is</p> <p>24 that they didn't have -- they had not taken any steps in</p> <p>25 reliance upon a claimed deal with Vinmar.</p>

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<p style="text-align: right;">86</p> <p>1 JUDGE WOOD: What does the UCC require a 2 seller to do if, prior to the date they were to load 3 the -- the fact situation is presented here develops? 4 MR. LEE: Well, the UCC actually doesn't 5 require -- 6 JUDGE WOOD: I guess if there's a contract, 7 then you're under anticipatory repudiation? 8 MR. LEE: Correct. 9 JUDGE WOOD: And your position is no 10 contract? 11 MR. LEE: No contract, and what the UCC 12 says is it gives you two different modes of damages. One 13 is the resale, which is sort of a cover, or 2708, which 14 is, if you don't cover, we're going to give you this 15 market differential. 16 JUDGE WOOD: So if there's no contract, 17 then we're not talking about damages? 18 MR. LEE: Correct. 19 JUDGE WOOD: If there is a contract, then 20 we're talking about a situation where there's an 21 anticipatory repudiation by the buyer in advance of the 22 next contract. If there was a contract, the next contract 23 requirement was the designation of destination? 24 MR. LEE: Correct. 25 JUDGE WOOD: Okay. And we did not reach</p>	<p style="text-align: right;">88</p> <p>1 they had was sold at a profit well in excess of everything 2 that they could have ever earned. And so 2708 (b) would 3 operate to end up with no damages if you look at the 4 market differential for the very same reason, and that's 5 the Knobs Chemical and Union Carbide case I think we cite 6 in our brief. And the Knobs case, by the way, talks about 7 jobbers, and a jobber is someone who hasn't bought the 8 product yet, which is exactly what we have here. They 9 didn't buy it, and what the Court talked about in that 10 situation is let's look at 2708 (b) and whether there's 11 overcompensation if we award the plaintiff damages. 12 What -- I'll sort of close on this kind of 13 overview of their damages if you get beyond the fact that 14 they're -- they're not damaged, but look at what they did 15 in calculating their damages. It's all about trying to 16 tweak it just to get it as high as we can. They increased 17 the volume by 5 percent, even though the contract that I 18 guess we're talking about now says it's the vessels 19 option. They claimed this resale to get a higher claim 20 amount. If you -- the price that they claim in their 21 damage model is considerably higher than a market 22 differential. 23 We had this long conversation about the KP 24 Chem situation at trial and that the claim was that KP 25 Chem is the one that forced the reduction of the inventory</p>
<p style="text-align: right;">87</p> <p>1 that point in this -- in this deal? 2 JUDGE DAVIDSON: Because Vinmar declined to 3 name -- 4 JUDGE WOOD: Did not give a destination. 5 JUDGE DAVIDSON: -- a destination. 6 JUDGE WOOD: Okay. 7 MR. LEE: Correct. But, I mean, to go 8 back, I mean, the election here in this case has been that 9 they've taken the position that they resold and so you 10 have to look at that transaction and based on the 11 evidence, but the 2708 -- and just to -- I have touched on 12 this in our brief. I won't waste a lot of time on it, but 13 there are a number of cases including the Fifth Circuit 14 which has held that there's two sections in 2708. There 15 is section (a) which addresses the basic rule that the 16 damage is the difference between the contract price and 17 the market price. 2708 (b) talks about a situation that 18 if the seller is undercompensated under A, then they have 19 the right to seek lost profits. 20 There have been a number of cases, 21 including the Knobs Chemical case from the Fifth Circuit, 22 which has applied that to also mean in a situation where 23 the seller is overcompensated so that we're not giving the 24 seller a windfall, which is exactly -- if you go back to 25 the same analysis, the only MX that is in the record that</p>	<p style="text-align: right;">89</p> <p>1 to -- on the sale in October. But, actually, what the 2 documents revealed is -- I went through them with 3 Mr. Lockwood, is that it was Tricon that was upside down. 4 It was Tricon asking KP Chem to accept a lower volume of 5 MX, and they also talked about how Tricon had the option 6 to declare FOB or CFR under that KP Chem contract. We 7 went through that contract. It's not there. 8 Another way that they tried to avoid having 9 to account for the full 5,000 metric tons that they sold 10 to KP Chem in October was to claim that there was some 11 swap. There's no evidence of the swap. There's no 12 evidence in the record of a contract or an agreement 13 between KP Chem and Tricon for a swap. The fact is -- the 14 record is and the evidence is they bought 5,000 metric 15 tons from J&J Chemical and took all of that and supplied 16 it to KP Chem. The prices were different and the reason 17 for that is that Tricon, as they explain in their e-mails, 18 they were asking for relief under various agreements or 19 whatever it is they had, but at the end of the day they 20 settled on, "We'll send this much at this price and we'll 21 send the rest of it at another price." They ended up with 22 5,000 metric tons being sent to KP Chem. 23 You know, at the end of the day, I think 24 that -- I think it's clear that they did not have any 25 damages. They profited greatly on this other transaction.</p>

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<p style="text-align: right;">90</p> <p>1 Obviously, we don't think there's a contract and no 2 jurisdiction.</p> <p>3 JUDGE BENTON: Questions of Mr. Lee? Okay. 4 Mr. Diaz-Arrastia?</p> <p>5 MR. DIAZ-ARRASTIA: Mr. Lee has covered a 6 lot of ground. I will try to be as brief as I can.</p> <p>7 And, really, where I wanted to start out is 8 just that I -- frankly, I'm a little upset that it seems 9 like their entire -- Vinmar's entire defense here is to 10 say that Ed Leyman, there's evidence that he is the Dean 11 of Aromatics Brokers in the United States, has been in the 12 business forever, is highly respected and he would lie to 13 make a commission of \$2500. That's what they want you to 14 believe, that Mr. Leyman lied to make a commission of 15 \$2500, the most respected aromatics trader in the United 16 States, somebody whose entire business depends on being 17 able to bring desperate parties together and have both 18 sides trust that he's going to treat them fairly. That is 19 just not credible. Mr. Leyman's not going to lie.</p> <p>20 Let me talk about the damages for a moment. 21 It takes some real mental gymnastics to try to conclude 22 that Tricon was not damaged in this case. It's very 23 obvious that they were damaged. Judge Wood asked a couple 24 of questions about what the UCC requires or doesn't 25 require. It is very clear that the UCC does not require</p>	<p style="text-align: right;">92</p> <p>1 2008 every year. January the 1st of 2008, every year, and 2 they had an obligation to buy that volume every month. 3 That is a contract. They had it in the bag and then they 4 also had the Vinmar contract in the bag. They were going 5 to make both sales. They were going to make both profits. 6 Vinmar breaches. They were damaged because they did not 7 get to make the Vinmar sale, although Vinmar was 8 contractually obligated to perform on that sale.</p> <p>9 They put up White & Summers, and again, 10 it's plain words. What White & Summers said is that if 11 the resale is at a price that is above the contract price, 12 then there are no damages. I agree, but that's not our 13 case. The contract price for the Vinmar contract was 14 thirteen ten per metric ton. The resale price under the 15 KP contract was 995 per metric ton. The resale price was 16 less than the contract price in our case and, therefore, 17 we have damages.</p> <p>18 Very quickly about the Knobs Chemical case. 19 It doesn't apply. A jobber is just not someone who 20 doesn't yet have the material. A jobber is somebody who 21 never exposes himself to market risk. That is in the 22 Knobs case. I'm sorry. From the Transworld case, well, a 23 jobber is a person who has their price fixed in advance 24 and never exposes himself to market risk.</p> <p>25 The evidence in this record is that Tricon</p>
<p style="text-align: right;">91</p> <p>1 that the seller have the goods in existence prior to the 2 breach. That is not a requirement, and in this business, 3 as Judge Benton has indicated, the trading's going back 4 and forth all of the time. It's very common to sell 5 material before you own it. It happens all the time and 6 the UCC does not require that Tricon have 5,000 metric 7 tons of MX before Vinmar breaches in order to suffer 8 damages.</p> <p>9 There's also no obligation under the UCC 10 that I have to make my replacement sale during the type 11 of -- during the time of performance for the contract that 12 was breached. That is not a requirement. I make my 13 replacement sale during a commercially reasonable period 14 of time, and that was done, especially in a market where 15 you couldn't get buyers.</p> <p>16 He keeps talking about the market being 17 frozen. Everybody made very clear that the market was 18 frozen because no one was buying, not because no one 19 wanted to sell. Everybody was desperate to try to sell. 20 There is definitely evidence on this record that Tricon 21 could have made both the KP sale, a sale that was made 22 pursuant to a preexisting contract executed on January the 23 1st of 2008.</p> <p>24 MS. LARSON: '7. 25 MR. DIAZ-ARRASTIA: I'm sorry. 2000 -- of</p>	<p style="text-align: right;">93</p> <p>1 always takes title to the MX it's going to sell before it 2 actually delivers it, and, therefore, it is exposed to 3 market risk. In this case, if instead of going down, the 4 price of MX would have gone up after this deal was made, 5 Tricon would have lost money. It had the good fortune 6 that it went the other way. Vinmar would have lost money, 7 and that's why we breached the contract. Tricon buys and 8 sells aromatics like MX and other petrochemicals all the 9 time. There has never been a question of Tricon's 10 financial ability to trade every day.</p> <p>11 JUDGE BENTON: That may be true, but 12 there's no evidence about that in the record.</p> <p>13 MR. DIAZ-ARRASTIA: The evidence in the 14 records -- Mr. Lockwood was asked, "Would you have been 15 able to supply both the KP contract and the Vinmar 16 contract?" And his unequivocal answer was, "Yes, we could 17 have," and that was never challenged.</p> <p>18 JUDGE BENTON: Okay.</p> <p>19 MR. DIAZ-ARRASTIA: Let's talk about a 20 couple of other things very, very quickly. Let's talk 21 about this whole question of mutual assent.</p> <p>22 JUDGE BENTON: But before you talk about 23 that -- and I do want you to talk about that -- I want you 24 to just -- there is suggestion in the record of 25 Mr. Lockwood's attempt to influence Mr. Leyman's</p>

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<p style="text-align: right;">94</p> <p>1 testimony, and you've touched on this, the suggestion that</p> <p>2 he would lie for a 2500-dollar commission, but there is</p> <p>3 that evidence in the record. There was some -- it might</p> <p>4 be read, rather, I should say, that he's trying to</p> <p>5 influence it and there's also in the record that</p> <p>6 Mr. Leyman hasn't sent a bill.</p> <p>7 JUDGE DAVIDSON: No. He sent the bill.</p> <p>8 MR. DIAZ-ARRASTIA: He sent the bill.</p> <p>9 JUDGE BENTON: It hasn't been paid.</p> <p>10 MR. DIAZ-ARRASTIA: It hasn't been paid,</p> <p>11 and I think it's not surprising that, given the trade</p> <p>12 hasn't been made, he hasn't been paid and we have always</p> <p>13 been very upfront that if we are successful in this case</p> <p>14 and we are able to collect from Vinmar, he will be paid,</p> <p>15 and I think that's just fair.</p> <p>16 JUDGE DAVIDSON: But the argument that I</p> <p>17 heard from Mr. Lee was that the failure -- that if the --</p> <p>18 if a deal being made is the only prerequisite of paying</p> <p>19 the commission to Mr. Leyman, the fact that you haven't</p> <p>20 paid a commission to Mr. Leyman, can that be read as some</p> <p>21 evidence that you think there was no deal?</p> <p>22 MR. DIAZ-ARRASTIA: Absolutely not. It</p> <p>23 just means that we haven't made any money on this deal.</p> <p>24 JUDGE DAVIDSON: But wait a minute. You're</p> <p>25 not -- but you're -- I mean, you would have owed the money</p>	<p style="text-align: right;">96</p> <p>1 saying this?" It seems only a natural thing to do to find</p> <p>2 out, you know, if you're saying that this is what</p> <p>3 happened, "Ed, it's not what you remember because it's not</p> <p>4 what I remember. Rick, it's not what you remember because</p> <p>5 it's not what I remember." It seems a very natural thing</p> <p>6 to do.</p> <p>7 JUDGE BENTON: Okay.</p> <p>8</p> <p>9 MR. DIAZ-ARRASTIA: Let's talk about mutual</p> <p>10 assent for a moment.</p> <p>11 Again, the -- the only evidence here that</p> <p>12 U.S. origin was -- that anyone told Mr. Leyman that U.S.</p> <p>13 origin was required is Mr. Wilson's own unsupported</p> <p>14 statement. The evidence is very clear that any discussion</p> <p>15 about what might be the loading port occurred after the</p> <p>16 deal was made. That is both what Mr. Wilson -- I'm sorry.</p> <p>17 That's both what Mr. Lockwood said and what Mr. Leyman</p> <p>18 said after the deal was made, and in both cases what they</p> <p>19 said was, "Well, I think it most likely would be U.S.</p> <p>20 Gulf, but I'm not going to guarantee it." That is what</p> <p>21 Leyman said and that is what Lockwood said in their</p> <p>22 testimony.</p> <p>23 And this is what's really interesting.</p> <p>24 Let's put up exhibit -- Joint Exhibit 8 for a second</p> <p>25 because this is an important document because I think the</p>
<p style="text-align: right;">95</p> <p>1 to Mr. Leyman if you had lost money on the deal?</p> <p>2 MR. DIAZ-ARRASTIA: Well, that is correct,</p> <p>3 but the trade has not been made.</p> <p>4 JUDGE DAVIDSON: But if it's your -- if</p> <p>5 it's your position that the debt was owed to Mr. Leyman</p> <p>6 when the deal was made, regardless of whether the trade</p> <p>7 was -- whether the actual, you know, xylenes were shipped,</p> <p>8 you have --</p> <p>9 MR. DIAZ-ARRASTIA: I mean, our position is</p> <p>10 not there. Our position is a broker earns their</p> <p>11 commission when they put the parties together and they</p> <p>12 make a trade. A trade has not been made. If we're</p> <p>13 successful in this case, we will owe the commission, but</p> <p>14 if the result of this case is that no deal was ever made,</p> <p>15 then we don't owe the commission.</p> <p>16 JUDGE DAVIDSON: Okay.</p> <p>17 MR. DIAZ-ARRASTIA: But with regard to</p> <p>18 Mr. Lockwood's communications with Mr. Leyman, the only</p> <p>19 evidence that exists is that after it came up, that Vinmar</p> <p>20 was saying that they would not perform because there was</p> <p>21 no deal because they required U.S. origin. Mr. Lockwood</p> <p>22 called Mr. Leyman to ask him, "What do you remember about</p> <p>23 this?" It seems to me only a natural thing to do.</p> <p>24 The record also is that Mr. Lockwood called</p> <p>25 Mr. Wilson and said, "Rick, what's going on? Why are you</p>	<p style="text-align: right;">97</p> <p>1 Panel recognizes -- no. 8. There we go. You know, two</p> <p>2 days after the deal was made when Mr. Wilson is asked by</p> <p>3 Mr. Anaya what's the origin of this material, what does he</p> <p>4 say? Exactly the same thing that Mr. Lockwood and</p> <p>5 Mr. Leyman said: "We don't really know, but it's most</p> <p>6 likely going to be U.S. Gulf."</p> <p>7 Now, would anybody say that if they were</p> <p>8 under the impression that they had a guarantee of U.S.</p> <p>9 origin? Of course not. And the attempt to fudge together</p> <p>10 loading and origin just doesn't work. Everybody agrees</p> <p>11 that in this industry those are two completely different</p> <p>12 concepts. Even Mr. Cofarn, their own expert, testified.</p> <p>13 We don't really need to put it up. It's just a brief</p> <p>14 statement, but I asked Mr. Cofarn -- it's on the Page 533</p> <p>15 of the record in this case. I asked: "Origin means where</p> <p>16 it's manufactured," and his answer is: "Yes, that's</p> <p>17 correct. There's a difference between origin and loading</p> <p>18 port." That was Mr. Cofarn's answer.</p> <p>19 The only way that somebody who is familiar</p> <p>20 with aromatics trading can interpret Joint Exhibit 8 is</p> <p>21 that on the 25th of July Mr. Wilson was very aware that he</p> <p>22 did not have a guarantee of U.S. origin. Clearly, there</p> <p>23 was a meeting of the minds, and when Mr. Anaya says,</p> <p>24 "Okay. That's what we will put in the PO," referring to</p> <p>25 Vinmar's purchase order, remember the PO. Nowhere in</p>

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<p>1 their PO is there a blank for loading port. There's only 2 a place for origin and it was left blank because there was 3 no guarantee of origin.</p> <p>4 Judge Wood asked about the feasibility of 5 delivering in Asia in the first half of September if the 6 discharge port was not going to be declared until the 7 8th of August, and there is evidence Mr. Lee made a lot of 8 speculation about what might happen, but the only evidence 9 in the record is that it would be very risky to guarantee 10 U.S. origin and load it in the U.S. Gulf by August the 11 8th.</p> <p>12 Even more than that, when Vinmar said, 13 "Look, we will still pay that -- the contract price if you 14 will guarantee U.S. origin," it was just not the same 15 deal. They said, "We want you to guarantee U.S. origin. 16 We want you to guarantee delivery in Asia by the first 17 half of September. Oh, and we also want you to push back 18 the discharge declaration until August 15th."</p> <p>19 That was an impossible thing to perform 20 under, and Vinmar had already let it be known that they 21 were not going to accept a cargo already on the water 22 because they wanted to be there when the inspection 23 occurred. The only way that you could possibly 24 establish -- provide a first half of September delivery 25 with Vinmar being present at the inspection unloading and</p>	<p>1 the U.S. Gulf but not a guarantee and that the origin 2 would not be ascertained until the discharge port was 3 declared, which never happened. That's what he said in 4 response to Mr. Anaya's question.</p> <p>5 And I think Mr. Lee touched on a number of 6 things, but I think I have hit the most important points 7 and, if you have questions, I would be very happy to 8 answer them.</p> <p>9 JUDGE DAVIDSON: I do. Mr. Lee made the 10 argument -- and I thought I tried to refine his argument a 11 little bit -- that your expert said that in the contracts 12 that he dealt with at his former employer, they never had 13 signature lines on the forms and he made the argument that 14 the presence of the signature blanks on these contracts 15 was an indication that the signatures were necessary in 16 order for the deal to go forward. That was what I thought 17 I got Mr. Lee to agree to.</p> <p>18 MR. DIAZ-ARRASTIA: I thank you for 19 pointing that out. I was looking through my notes because 20 I thought I forgot something, and that was it.</p> <p>21 JUDGE DAVIDSON: And I want you to respond 22 to that specific argument.</p> <p>23 MR. DIAZ-ARRASTIA: Well, the first thing 24 is that what Mr. Simpson said is the paper that himself 25 used at Valero did not include signature blocks, but that</p>
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<p>1 that would not be -- and the discharge port would not be 2 declared until August 15th is by providing the nation of 3 origin MX.</p> <p>4 Let's also talk about Joint Exhibit 12.</p> <p>5 This is the wipe the slate clean. Judge Benton, you were 6 interested in that. Now, this is what's interesting about 7 that. Those conversations happened on the 31st of July. 8 Do you remember what happened two days before on the 9 29th of July? Joint Exhibit 14. That is when Mr. Pascu 10 very unequivocally -- when Mr. Rajevac very unequivocally 11 tells Mr. Pascu, "We may supply nation of origin MX." On 12 the day that Mr. Wilson was offering to wipe the slate 13 clean, Vinmar had been told two days prior that Asian 14 origin MX was a possibility. Vinmar would like you to 15 believe that Mr. Pascu sat there for two days not telling 16 Mr. Wilson.</p> <p>17 Every witness who testified said that is 18 incredible. If you believed that that was an important 19 part of your deal and your operation specialist found out 20 that that was not going to be supplied, you -- it would 21 maybe take two seconds for your op specialist to let you 22 know that. He had to have known by then, but the problem 23 is, just as shown in Joint Exhibit 8, Mr. Wilson 24 understood that he did not have a guarantee of U.S. 25 origin. He understood that it would likely be loaded in</p>	<p>1 in trading he frequently saw paper that had signature 2 blocks and that, in spot deals, it was customary not to 3 sign them.</p> <p>4 So the evidence is that in the business 5 sometimes the paper has signature blocks and sometimes it 6 does not, but the custom is that, in spot deals like this 7 one, they are not signed. In addition to that, obviously, 8 there has to be some evidence of assent, but the only -- 9 but signing it is not the only way to give assent and here 10 there was assent by an e-mail from Mr. Pascu saying, "Here 11 are the comments. I'm going to revert with a purchase 12 order soon, the purchase order containing the same terms, 13 including the arbitration term," and you have the 14 testimony from Vinmar's own expert that said Mr. Pascu 15 would never have said, "I'll revert with a PO if it was 16 not," because he believed that a deal was made.</p> <p>17 JUDGE DAVIDSON: Okay.</p> <p>18 JUDGE BENTON: Okay.</p> <p>19 JUDGE DAVIDSON: That's my question.</p> <p>20 JUDGE BENTON: Judge Wood?</p> <p>21 JUDGE WOOD: That's it.</p> <p>22 JUDGE BENTON: While she's -- all right.</p> <p>23 I'll ask out loud something that I -- it's a question 24 directed to these two, really. The court reporter -- not 25 Mr. Plair -- but the other court reporter, as I recall,</p>

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<p style="text-align: right;">102</p> <p>1 has physical position of the paper exhibits. Would it 2 serve us to ask the parties, since they have the exhibits 3 electronically, to send us the exhibits electronically? 4 JUDGE DAVIDSON: We've got paper copies. 5 JUDGE BENTON: We have one set that we 6 don't -- 7 JUDGE WOOD: I have paper copies. We got 8 them. 9 JUDGE DAVIDSON: We got them before. I've 10 got some of them right here. 11 JUDGE BENTON: Oh, that's right. 12 MR. DIAZ-ARRASTIA: Everybody has their own 13 set. 14 JUDGE BENTON: That's Right 15 MS. LARSON: It won't be a problem to send 16 them electronically. 17 MR. DIAZ-ARRASTIA: We can easily send you 18 another copy. 19 JUDGE BENTON: No. I forgot. I forgot we 20 have them in the notebook. 21 JUDGE WOOD: But let us have a short 22 meeting. 23 (Discussion off the record) 24 JUDGE BENTON: Let's do one set of the 25 electronic exhibits just --</p>	<p style="text-align: right;">104</p> <p>1 JUDGE DAVIDSON: Normal times. 2 MR. DIAZ-ARRASTIA: -- times. 3 JUDGE BENTON: And then finally, for the 4 record, in as much as we contemplate today that the final 5 piece of evidence will be delivered by the close of 6 business tomorrow, our time under AAA Rules will begin to 7 run 30 days from tomorrow. Correct, Mr. Lee? 8 MR. LEE: Yes. 9 JUDGE BENTON: Mr. Diaz-Arrastia? 10 MR. DIAZ-ARRASTIA: That's understood. 11 JUDGE BENTON: All right. 12 MR. LEE: To the extent AAA applies. 13 JUDGE BENTON: To the extent AAA applies. 14 JUDGE WOOD: Well -- and we're operating 15 under those Rules for purposes of here, and if your point 16 is there's no jurisdiction, we would have that answer for 17 you within 30 days also. 18 MR. LEE: Correct. I was just teasing. 19 So, certainly, yes. 20 JUDGE BENTON: All right. There being 21 nothing else, we are off the record. 22 (Proceedings concluded at 12:13:04 p.m.) 23 24 25</p>
<p style="text-align: right;">103</p> <p>1 JUDGE DAVIDSON: Well, to him. I don't 2 need it on my computer. 3 MR. DIAZ-ARRASTIA: We will do that. 4 JUDGE BENTON: He needs it. 5 MR. DIAZ-ARRASTIA: Just to Judge -- 6 JUDGE WOOD: We have had two court 7 reporters here and we are all trusting Judge Benton to 8 have a set electronically, and then if there's a question, 9 we have it. 10 JUDGE BENTON: The other -- the other 11 housekeeping point is the evidentiary record is closed, 12 save and except for the supplement of Chuck Matthews' -- 13 MR. LEE: Right. 14 JUDGE BENTON: -- testimony. 15 Do the parties want to direct Mr. Plair as 16 to when he should have this part of the transcript 17 prepared and made available to the parties and to the -- 18 JUDGE WOOD: Do y'all need it? 19 MR. DIAZ-ARRASTIA: I think it's more for 20 your benefit than ours. 21 JUDGE DAVIDSON: I don't need it. 22 JUDGE BENTON: Judge Wood? Okay. Very 23 good. We don't need it. 24 MR. DIAZ-ARRASTIA: Well, I mean, I would 25 like to have it but at normal --</p>	<p style="text-align: right;">105</p> <p>1 STATE OF TEXAS 2 COUNTY OF HARRIS 3 4 I, JAMES M. PLAIR, the undersigned Certified Shorthand 5 Reporter in and for the State of Texas, do hereby certify 6 that the above and foregoing pages contain a full, true, 7 and correct transcription of my shorthand notes taken upon 8 the occasion set forth in the caption hereof as reduced to 9 writing by me and under my supervision. 10 11 I further certify that the transcription of my notes 12 truly and correctly reflects the exhibits offered into 13 evidence, if any; that I am neither counsel for nor 14 related to any party in this cause and am not financially 15 interested in the outcome. 16 17 Certified to by me on this 24th day of November, 2010. 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">JAMES M. PLAIR, CSR, RPR Texas CSR 4409 Expiration: 12/31/2011 SUNBELT REPORTING & LITIGATION SERVICES 1-800-666-0763</p> <p>Job No. 89315</p>

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